

**May 4, 2011**  
**Testimony of former U.S. Senator Slade Gorton**  
**before The U.S.-China Economic and Security Review Commission**  
**hearing on**  
**China's intellectual property rights and indigenous innovation policy**

U. S. corporations consistently lose billions of dollars in intellectual property every year due to patent, copyright and trademark piracy and infringement, together with the impacts of Chinese indigenous innovation policies. All in all, not surprisingly, China is the greatest offender.

How to measure these losses presents huge challenges, but let's start with a study by the International Data Corporation. It estimates China's software piracy rate in 2009 to have been 79%, with a value of about \$7.6 billion. Another study found direct losses to copyright industries in 2005 to have been on the order of \$58 billion in lost output and accompanying lost jobs, earnings and tax revenues. A reasonable assumption might be that China accounts for about 25% of this number, or \$14 billion.

We can, of course, take for granted that these losses have been matters of great concern to several American administrations and therefore the subject of constant negotiations, the only common feature of which is a lack of success.

And it is, of course, the resulting frustration, coupled with the huge imbalance in our bilateral trade with China, that has spawned retaliatory schemes like Senator Schumer's proposal to sanction China's artificial valuation of its currency.

But while I believe that the senator's ideas stem from an appropriate concern over those trade imbalances and unfairness, I do not feel that his approach is likely to succeed.

We should recognize that the control of a nation's own currency to the maximum extent possible is in its clear vital sovereign national interest. One need only reflect on the reaction here in the United States to any Chinese attempt to order us to raise interest rates so as to strengthen the dollar to understand and even to sympathize with China's view on the same subject.

At the same time, however, the protection of our national intellectual property is clearly a vital national sovereign interest of the United States. We have the sovereign right to adjust our trade policies so as to protect that interest. Unfair trade policies should be met by trade sanctions.

Thus, our protection of that intellectual property having been so ineffectual, I submit to you once again an idea first brought to your attention several months ago by my friend, Leo Hindery.

The United States should impose on all imports from China a goods tariff designed to produce each year 150% of the losses of US intellectual property in the previous year. The GAO should determine that number, and the policy should continue for as long as that piracy exceeds an appropriate share of US exports to China, say 10%. The policy should be universal, that is to say it should apply equally to all other trading partners the piracy in which exceeds a certain level. The president should be

given some, but very little, authority to waive the policy, in whole or in part, upon a determination that it is in our clear national interest to do so.

The goal, of course, is not to produce revenue for the federal treasury, but to reduce intellectual property piracy, and any degree of presidential discretion should be directed at rewarding success in that endeavor.

It will be objected that this policy violates a number of our international trade agreements, as it does, thus allowing retaliatory trade sanctions against US exports to China, though it should be pointed out that Chinese piracy is so extensive as to constitute such violations as well.

True as that right of retaliation is, and perhaps effective in the case of any trading partner with whom we have a trade surplus, it is clear that a China with a \$273 billion surplus (2010) with the United States can only lose, and lose big, by any set of tit for tat retaliatory trade sanctions with the United States.

This general proposal does not, of course, answer all relevant questions. Do we treat patent, copyright and trademark piracy and violations in the same fashion? And what about government indigenous innovation policies? To what extent do they differ from trade secret sharing in the normal course of corporate negotiations? And how do we fairly and accurately determine the losses resulting from IP piracy?

Each of these questions is food for examination by this Commission, but the time for decisive action has already passed and we should not wait on the results of future fruitless negotiations.