

**ISSUES BEFORE THE U.S.-CHINA JOINT  
COMMISSION ON COMMERCE AND TRADE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
COMMERCE, TRADE, AND CONSUMER PROTECTION  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JUNE, 9 2005

**Serial No. 109-73**

Printed for the use of the Committee on Energy and Commerce



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>

U.S. GOVERNMENT PRINTING OFFICE

21-645PDF

WASHINGTON : 2005

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## ISSUES BEFORE THE U.S.-CHINA JOINT COMMISSION ON COMMERCE AND TRADE

THURSDAY, JUNE 9, 2005

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 1:22 p.m., in room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Blackburn, Schakowsky, and Green.

Staff present: Andy Black, deputy staff director, policy; Chris Leahy, policy coordinator; David Cavicke, general counsel; Brian McCullough, professional staff; Will Carty, professional staff; Billy Harvard, clerk; Terry Lane, deputy communications director; Larry Neal, deputy staff director, communications; Jonathan Cordone, minority counsel; Turney Hall, staff assistant; and David Vogel, staff assistant.

Mr. STEARNS. Good afternoon. The subcommittee will come to order. I want, first of all, to start by thanking the Department of Commerce for appearing here today to talk about the U.S.-China Joint Commission on Commerce and Trade, the JCCT. Now, there are many important issues to discuss with regard to China. Given the importance of intellectual property rights—IPR—to the American economy and its engine of innovation, we are particularly glad that Mr. Dudas has come to discuss intellectual property rights—IPR. Now, frankly, Mr. Dudas, your testimony, I think, is very critical to the committee's understanding the complexity of these problems and, of course, how we go about solving them.

My colleagues, U.S.-China trade began to grow shortly after diplomatic relations were established in 1979, paving the way for a bilateral trade agreement and most-favored nation status in 1980. Since 1980, U.S.-China trade has risen from \$5 billion a year to \$231 billion a year in 2004. China joined the World Trade Organization, the WTO, in 2001. China is now the third-largest U.S. trading partner, it is the second largest source of imports, and it is fifth largest export market. All of that economic activity suggests a thriving economic relationship between the United States and China. But for some this rapid growth also represents a cause of some concern, especially when we consider the \$162 billion trade deficit with China last year. And while China continues to make significant progress in addressing a number of trade issues, the

USTR in 2005 placed China on a Special 301 Priority Watch List simply because of its failure to significantly improve protection of intellectual property rights. This is a critical issue for this committee, and the health of the United States economy, and for our U.S. global leadership in developing intellectual capital, whether it is the latest “Star Wars” movie, the most advanced and safest automobiles, or the next generation of medicines that will save millions of lives around the world every year.

Established in 1983, the JCCT serves as a forum for high-level discussions on bilateral trade and for promoting commercial relations between the United States and China. The Intellectual Property Working Group was established in 2004 to address the ever-increasing problem of theft of U.S. intellectual property through counterfeiting and piracy. And while the JCCT has been a very valuable mechanism for identifying issues ripe for discussion and setting priorities, there is much work to be done and result yet to be seen. According to a recent estimate from the International Intellectual Property Alliance, U.S. copyright firms lost between \$2.5 to \$3.5 billion in 2004 from lost sales in China. It also is estimated that between 15 and 20 percent of all products made in China are fakes, either counterfeited or pirated. These figures become even more significant when one considers that in the year 2002, the U.S. core copyright industries’ activities accounted for more than 6 percent of the United States GDP and achieved foreign sales and exports of over \$89 billion. These are very large numbers that represent very real economic harm to the United States business, innovation, and, of course, its jobs.

The rampant theft of U.S. intellectual property in China through illegal counterfeiting and copyright piracy continues to challenge the belief that trade and the economic inertia it creates will eventually lead to a net benefit for all who are involved. In those industries that are fueled by intellectual capital—movies, recordings, software, engineering, and so on—there is increasing concern that the legal IPR fortifications protecting this critical and valuable knowledge are being breached by lack of enforcement, understanding, and just plain respect for a rules-based trading system like the WTO and agreements like the Trade-Related Aspects of Intellectual Property, the TRIP. The engine of U.S. innovation relies on the rule of law to work and create value for both the producer and, of course, the consumer. Robust intellectual property rights protection and enforcement is equally important for the many innovative Chinese companies who are now just embracing IPR as a means to protect and grow their own investment in knowledge. We, therefore, are very interested to get a status report from the under secretary as to the current situation regarding IPR in China and the progress—and, of course, by progress I mean the results—of the JCCT and the Intellectual Property Working Groups to address these concerns.

It is my hope that our hearing today will identify what the JCCT is doing to stem the U.S. losses from fakes and other the ways that thieves are stealing U.S. intellectual property and indirectly, of course, United States jobs and prosperity. I am heartened by the important work the JCCT is doing in the IPR area, including the establishment of a working group to consult on rule-of-law issues

related to a market economy, as well as careful review of Chinese progress at instituting structural market reforms. Today, the committee would like to review in particular the progress being made by the Chinese government to combat intellectual property theft, specifically counterfeiting and piracy, including Chinese efforts to reduce intellectual property rights, infringement levels, increase penalties for intellectual property infringement, crack down on these violators, and educate the Chinese public about the importance of IPR protection. We would also like to know how effective the United States has been in simply influencing China to accomplish these goals and how the success of these efforts is being measured. Today, the committee wants to hear about progress—and, of course, by that I think we all want to hear some results this afternoon.

So I would like to welcome you here, Mr. Dudas, and look forward to your testimony. With that, the ranking member, Ms. Schakowsky.

[The prepared statement of Hon. Clifford Stearns follows:]

PREPARED STATEMENT OF HON. CLIFFORD STEARNS, CHAIRMAN, SUBCOMMITTEE ON  
COMMERCE, TRADE, AND CONSUMER PROTECTION

Good Afternoon. I want to start by thanking the Department of Commerce for appearing here today to talk about the U.S.-China Joint Commission on Commerce and Trade, the JCCT. There are many important issues to discuss with regard to trade with China, and given the importance of intellectual property rights (IPR) to the American economy and its engine of innovation; we are particularly glad Mr. Dudas is here to discuss intellectual property rights (IPR). Your testimony is critical to the Committee's understanding the complexity of these problems and how we are solving them.

U.S.-China trade began to grow shortly after diplomatic relations were established in 1979, paving the way for a bilateral trade agreement and most-favored nation (MFN) treatment in 1980. Since 1980, U.S.-China trade has risen from \$5 billion a year to \$231 billion a year in 2004. China joined the World Trade Organization (WTO) in 2001. China is now the third-largest U.S. trading partner, its second largest source of imports, and its fifth largest export market. All of that economic activity suggests a thriving economic relationship between the United States and China. But for some, this rapid growth also represents a cause for concern, especially when we consider the \$162 billion trade deficit with China in 2004. And while China continues to make significant progress in addressing a number of trade issues, the USTR in 2005 placed China on a Special 301 Priority Watch List because of its failure to significantly improve protection of intellectual property rights. This is a critical issue for this Committee, the health of the U.S. economy, and for our U.S. global leadership in developing intellectual capital, whether it's the latest Star Wars movie, the most advanced and safest automobiles, or the next generation of medicines that will save millions of lives around the world every year.

Established in 1983, the JCCT serves as a forum for high-level discussions on bilateral trade and for promoting commercial relations between the U.S and China. The Intellectual Property Working Group was established in 2004 to address the increasing problem of theft of U.S. intellectual property through counterfeiting and piracy. And while the JCCT has been a very valuable mechanism for identifying issues ripe for discussion and setting priorities, there is much work to be done and results yet to be seen. According to a recent estimate from the International Intellectual Property Alliance, U.S. copyright firms lost between \$2.5 and \$3.5 billion in 2004 from lost sales in China. It also is estimated that between 15 and 20% of all products made in China are fakes, either counterfeited or pirated. These figures become even more significant when one considers that in 2002, the U.S. core copyright industries' activities accounted for more than 6% of U.S. GDP and achieved foreign sales and exports of over \$89 billion. These are very big numbers that represent very real economic harm to U.S. business, innovation, and jobs.

The rampant theft of U.S. intellectual property in China through illegal counterfeiting and copyright piracy continues to challenge the belief that trade and the economic inertia it creates will eventually lead to a net benefit for all involved. In those industries that are fueled by intellectual capital—movies, recordings, software, engi-

neering, and so on—there is increasing concern that the legal IPR fortifications protecting this critical and valuable knowledge are being breached by lack of enforcement, understanding, and just plain respect for a rules-based trading system like the WTO and agreements like Trade Related Aspects of Intellectual Property (TRIPs). The engine of U.S. innovation relies on the rule of law to work and create value for both the producer and consumer. Robust intellectual property rights protection AND enforcement is equally important for the many innovative Chinese companies who are just now embracing IPR as a means to protect and grow their own investment in knowledge. We therefore, are very interested to get a status report from Undersecretary Dudas as to the current situation regarding IPR in China and the progress—and by progress I mean results—of the JCCT and the Intellectual Property Working Group to address these concerns.

It is my hope that our hearing today will identify what the JCCT is doing to stem the U.S. losses from fakes and other the ways thieves are stealing U.S. intellectual property, and indirectly, U.S. jobs and prosperity. I am heartened by the important work the JCCT is doing in the IPR area, including the establishment of a working group to consult on rule of law issues related to a market economy as well as careful review of Chinese progress at instituting structural market reforms. Today, the Committee would like to review, in particular, the progress being made by the Chinese government to combat intellectual property theft, specifically counterfeiting and piracy, including Chinese efforts to reduce intellectual property rights infringement levels, increase penalties for intellectual property infringement, crack down on violators, and educate the Chinese public about the importance of IPR protection. Also, we would like to know how effective the United States has been in influencing China to accomplish these goals and how the success of these efforts is measured. Today, the Committee wants to hear about progress—and by that, we mean results.

Again, I would like to welcome Undersecretary Dudas here today. We look forward to your important testimony. Thank you.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman, for holding this hearing on the Administration's progress in addressing the serious trade issues that we have with China. I understand that the Commerce Department was reluctant to provide us with a witness today, and I welcome Mr. Dudas. I am glad that you are here. I can really understand the hesitation. I would demure as well, frankly, if I had to defend the record of this Administration.

Failure by the Administration to address such U.S.-China trade issues such as forced labor production practices, massive counterfeiting of American products, and the refusal to allow the Yuan to float freely may be good for the Walton family dividend checks from Wal-Mart, but it has been a disaster for the American economy as a whole and America's working families in particular.

Furthermore, this failure to achieve meaningful resolution of the unfair trade practices employed by China is having more and more serious consequences. As our trade deficit grows and these dollars are used to purchase evermore of the debt instruments created by this Administration, China becomes less and less vulnerable to retaliatory measures available to the U.S. Government. By the time either this Administration wakes up or is replaced by one more in tune with economic reality, we may find ourselves with no choice but to accept the terms of trade dictated by the Chinese because they will have the power to harm our economy with a computer stroke.

Despite promises made as a condition of U.S. acceptance of the admission of China to the World Trade Organization, despite international treaties signed by the Beijing government, and in the face of public aggravation worldwide, China continues to rely upon slave-like labor conditions for its export advantages from its only unions, whose sole function is to transmit government messages to the workforce, exploits its workers with subsistence wages, treach-



erous working conditions and little or no benefits. Women in the workforce face the worst exploitation. What has the Administration done about the import of goods made under these competitive conditions?

China has become the pirate capital of the world. Goods that we have a notable comparative advantage in—namely movies and recorded music and computer software—generate little income to their American owners as pirates dominate sales in China. Current estimates are that 15 to 20 percent of China's manufactured goods are counterfeit, encompassing 8 percent of its GNP. The counterfeiting problem has grown even more, threatening our economic well-being. Apparently, designs for such large-scale items as GM cars and SYSCO operating systems are being knocked off. If all of our technology continues to be appropriated at will by Chinese entrepreneurs, then our economic demise is a long-term certainty.

China is also playing Russian roulette with the world economy by refusing its currency to float freely. Our record trade deficit with China, \$162 billion in 2004 alone, and the related growth in foreign currency reserves, reportedly \$608 billion, more than triple the reserves of 2000, cannot be sustained. Inflationary pressures are bound to eventually reach the boiling point in China, and another international financial crisis will result.

Finally, I acknowledge that China, as a superpower, is a special case. It is understandable that this Administration would treat their economic imperialism lightly if such kid-glove treatment resulted in political advances that made the region and the world more stable. But what has the Administration gotten for its forbearance? The answer is nothing. For all its kid-gloves approaches to China's economic aggression, this Administration has not advanced the cause of peace and democracy in China and in the region as a whole.

My question to the Administration is simple. When do the gloves come off? When are we going to get serious about the threat to our economy posed by China's unfair trade practices? Thank you, Mr. Chairman.

Mr. STEARNS. I thank my colleague. The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I would like to thank you and our ranking member for holding this important hearing on U.S.-China Joint Commission on Commerce and Trade. I am pleased the subcommittee is exerting our trade jurisdiction which extends to non-tariff trade barriers. In my opinion, most of this country's trade problems with China fall squarely within that jurisdiction.

China's currency manipulation and state subsidies give it an unfair competitive advantage when it comes to trade with the United States. But those are government-sponsored activities. It has become all too clear that a growing problem is with China's counterfeiting and intellectual property violations that are taking place underground.

According to the U.S. trade representatives, Chinese goods account for 66 percent of all goods seized at U.S. ports that infringe on intellectual property rights. Figures from the software industry suggest that at least 90 percent of all software installed in Chinese

computers is pirated. Whether it is piracy of movies, software, or the counterfeiting of auto parts and pharmaceutical, these IPR infringements by the Chinese have cost our country billions of dollars, and without a doubt, this illegal activity has contributed to the loss of jobs in our own country.

As many of us mourn the decline of the U.S. manufacturing sector, we are told to be encouraged because the United States is a country of ideas, and these ideas will keep us on track for economic growth. But infringing on U.S. intellectual property rights, the Chinese essentially are stealing these ideas. For our economic security we must demand that China abide by international laws protecting our ideas and our intellectual property.

Over the last 25 years, the copyright industry's share of U.S. GDP grew twice as fast as the rest of the U.S. economy. It is clear that the continued growth in IPR infringement will have an increasingly devastating impact on our economy. And I have no doubt that this was one of the most important topics discussed at the U.S.-China Joint Commission on Commerce and Trade meeting. And I have every confidence that the U.S. will take a hard line with the Chinese, but it is imperative that we hold their feet to the fire on this issue and demand that the Chinese comply with international law.

I look forward to hearing from our witness about the best way to accomplish that goal. And again I thank you for appearing today, and again thank you, Mr. Chairman and ranking member, for holding the hearing.

Mr. STEARNS. I thank my colleague. Now, without further ado, there appears to be no more opening statements.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank You, Chairman Stearns, for holding this important hearing today. This Committee has jurisdiction over non-tariff trade issues and this hearing continues the work we did in the last Congress to examine the issues within our jurisdiction. And I expect the Committee to continue work on these trade-related issues.

Trade is a vital component to our economic growth and prosperity. Trade facilitates jobs in the U.S. for both imports and exports. Trade also provides our trading partners and us a higher standard of living. But trade can also create growing pains as resources—and jobs—are re-allocated to our most competitive sectors. We all enjoy cheaper goods that leave more income for other needs, but at the same time nobody wants to lose US jobs. We expect that when we open our markets to foreign trade that benefits our consumers, likewise our partners will open their markets to the goods and services we export and in the same manner.

No other bi-lateral trade partner has received as much attention in recent years as China, and with good reason. With its accession to the WTO in December of 2001, it has become a force in global trade. China is now our third largest trading partner with over \$231 billion in trade in 2004. It has moved ahead of Germany as our fifth largest export market and is our second largest source of imports. Our trade deficit with China could reach \$211 billion this year.

Although there are a number of reasons for the trade imbalance, many concerns regarding China's trade practices involve their commitment to fulfilling their obligations as a member of the WTO. I am generally a "free trader", but I voted against giving China permanent status as a "most favored nation". I opposed China becoming a member of the World Trade Organization (WTO). I did not believe we could count on the Chinese government to live it up to its promises. This hearing provides yet another example of why we should be skeptical about promises made by China.

A number of recent trade concerns have been addressed successfully through the Joint Commission on Commerce and Trade (JCCT). Unfortunately, some concerns require additional work.

One specific area that needs continued improvement is the protection of Intellectual property rights. One of our most valuable exports is our intellectual property, whether in the form of computer software, entertainment DVDs, or other copyright and trademark products. Yet more than 90% of the market for these products in China is lost to counterfeits and piracy.

Last year, the JCCT addressed many of these issues. Through their work, progress has been made and China instituted reforms last year. Yet concerns remain that despite this progress, the market for our IP exports has changed very little in China and piracy is still rampant. This is not fair trade. It is important that our most valuable assets receive the same protections abroad as the protections we provide to foreign producers who send their goods here. Our relationship with China depends on a mutual respect that is necessary for bi-lateral trade.

I am pleased we have the Under Secretary of Commerce for Intellectual Property Dudas here to answer questions on this important topic. He is Co-chair of the JCCT Intellectual Property Working Group and knows how important it is that we achieve further improvement from China on IP protection.

I thank the Chairman and yield back the balance of my time.

Mr. STEARNS. We welcome Mr. Jon W. Dudas, Under Secretary of Commerce for Intellectual Property Rights; Director, United States Patent and Trade Office, to our hearing. And I think you have worked on the Hill before, so it is probably nice to say welcome back to the Hill and we appreciate your opening statement this morning.

**STATEMENT OF JON W. DUDAS, UNDERSECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE**

Mr. DUDAS. Thank you very much, Mr. Chairman, and thank you, Ranking Member Schakowsky and——

Mr. STEARNS. You might pull the mike just a little——

Mr. DUDAS. Oh, yes.

Mr. STEARNS. [continuing] closer to you. That is good.

Mr. DUDAS. Thank you, yes. You are correct, I did work on the Hill. I worked for the Judiciary Committee, and I think it is always important that I acknowledge mistakes I made as a staffer. I remember sitting behind the dais and passing notes to the chairman or the ranking member to ask mean questions of the witness, and I just want to admit openly to the committee I was wrong to do that. So I can recognize that. I think it shouldn't be done.

I sincerely appreciate the opportunity to discuss the U.S.-China Joint Commission on Commerce and Trade and related intellectual property issues with China. Mr. Chairman, I am sure you won't remember, but I had the opportunity 5 years ago to staff you on a delegation to the European Union where you helped lead, with Congressman Goodlatte, discussions on the importance of intellectual property and the importance of trade and technology. Much has changed since then, but as today's hearing demonstrates your strong commitment to resolving critical international economic issues relating to intellectual property and trade and technology has not changed.

As the Under Secretary for Intellectual Property and Director of the Patent and Trademark Office, I lead the only government agency solely devoted to intellectual property. But that leaves for me my only regret today, that my knowledge and expertise are limited to intellectual property matters. I am certain we can fill more than a day with these critical issues, and any matter that I cannot ad-

dress I can assure you I will bring back to the appropriate agency within the department or at the Administration.

Secretary of Commerce Carlos Gutierrez is keenly aware of the significance of intellectual property protection for American businesses and has made combating piracy and counterfeiting a top priority for the Department of Commerce. As Under Secretary of Commerce for Intellectual Property, I am dedicated to reducing the toll that IP theft takes on Americans. As you know, I co-chair the Joint Commission on Commerce and Trade Intellectual Property Rights Working Group along with Ambassador Josette Shiner, who is the Deputy U.S. Trade Representative.

Through the JCCT and other avenues, we are working closely with China to improve the situation for U.S. IP rights holders. JCCT functions range from technical consultations to meetings with high-level U.S. and Chinese officials literally from the offices and agencies up through the Premier of China.

Today, I will update you on the progress of this group as it relates to intellectual property rights. And I can tell you, China has taken some important steps in the right direction to improve intellectual property protection. Unfortunately, however, we have not yet seen a significant reduction in IPR infringements throughout China, the critical test. The Chinese have reported significant increases in the last several months in criminal prosecutions as a result of some of the measures of JCCT, but we still have not yet seen the effect on the sales of legitimate products in China, again, the real test, the real results. So we continue to impress on the Chinese that action plans and commitments are important, but they must translate into actual reductions of IP theft.

During last year's session of the JCCT, China committed to, first and foremost, significantly reduce IPR infringement levels across the country, to subject a greater range of violations to criminal penalties, and to apply criminal sanctions to the import, export, storage, and distribution of pirated and counterfeited goods, as well as online piracy. They committed to crack down on IPR violators through nationwide enforcement actions and increase customs enforcement actions making it easier for rights holders to secure effective border enforcement. They committed to improve protection of electronic works by ratifying and implementing the WIPO Internet Treaties and by extending the ban on the use of pirated software to local governments. They also committed to launch a national IPR education campaign and to establish an Intellectual Property Rights Working Group to consult and cooperate with the U.S. on the full range of IPR issues.

In December the Chinese Supreme People Court issued a new judicial interpretation intended to increase criminal prosecution of IPR infringements in China. We have seen some results; we have also seen some disappointments. The most recent IPR Working Group meeting was just 2 weeks ago right here in Washington where I met with my Chinese counterpart, Madame Ma. We discussed our expectations about intellectual property rights related commitments made by the Chinese in the 2004 JCCT. We advanced cooperation between the U.S. and Chinese agency in combating large-scale IPR counterfeiting and piracy syndicates, and in

this process, many issues were clarified, understanding was advanced, and progress was made.

China agreed to anti-counterfeiting campaigns begun in Beijing and Shanghai to other large cities. The Beijing and Shanghai campaigns allow rights holders to register their trademarks with the authorities, and those authorities then sweep illegal street stalls and kiosks and seize all infringing goods.

And as part of our continuing staff-level consultations with the Chinese, we have developed a mechanism to refer appropriate cases to China's Ministry of Commerce with a formal request for review and appropriate response, specific cases seeking specific responses. Under this mechanism, U.S. companies may report infringing activity to the Department of Commerce and provide all relevant information about the infringement and efforts to resolve it.

Secretary Gutierrez returned just this week from his first official trip to China where he was promoting the Administration's Fair Trade Agenda and discussing issues of ongoing concern. His central message on intellectual property was that China must deter widespread infringements of IPR through strict enforcement. He made his message clear and he made his message simple. And I will quote what he said the first day in China. "Intellectual property rights violations are a crime, and we don't believe we should be negotiating crimes with our trading partners." Next, Secretary Gutierrez will chair the 2005 JCCT meeting scheduled in July in Beijing along with the U.S. Trade Representative Portman and Vice Premier Wu Yi from China.

As we work toward China taking drastic improvements in its IPR system, we absolutely must not underestimate the steps that our businesses can take to reduce the tolls in IP thefts. We are encouraging our industries to work with us and other U.S. agencies to improve China's IP protection and enforcement environment, and we are asking entities to do specific things: one, they themselves urge the fair and transparent implementation of China's IPR system; that they fully exploit the system within China; that they provide us with detailed information on each deficiency they see; and that they support our bilateral and multilateral efforts.

So in closing, Mr. Chairman, members of the subcommittee, the JCCT process continues to be a high-level government-to-government forum to examine and address important trade and commerce issues with China. By continuing to work with you, other Members of Congress, other agencies and private industries in likeminded countries importantly, we will continue to do more to help American businesses protect their intellectual property. Thank you all for your leadership on this issue, and I look forward to continuing to work with you in this hearing and beyond.

[The prepared statement of Jon W. Dudas follows:]

PREPARED STATEMENT OF HON. JON W. DUDAS, UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND  
TRADEMARK OFFICE

#### INTRODUCTION

Chairman Stearns, Ranking Member Schakowsky, and Members of the Subcommittee: Thank you for this opportunity to appear before you to discuss the U.S.-China Joint Commission on Commerce and Trade (JCCT), as well as the broader

set of international intellectual property (IP) issues relating to China. As you are surely aware, the U.S. Department of Commerce has a prominent role in protecting IP abroad. Secretary of Commerce Carlos Gutierrez is keenly aware of the increasing significance of IP protection for American businesses and innovators and has made combating piracy and counterfeiting a top priority for the entire Department. As Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO), I am dedicated to marshaling U.S. government efforts to reduce the toll that IP theft takes on American IP owners. I also co-chair the JCCT IPR Working Group along with Ambassador Josette Shiner, Deputy U.S. Trade Representative. We are very appreciative of the Subcommittee's interest in IP protection and the JCCT process and thus commend you for holding today's hearing.

Through the JCCT and other avenues, the U.S. hopes to continue to work closely with China to improve the situation for U.S. right holders. The process aims to produce concrete, discrete results. During the last year's session of the JCCT, China presented an action plan designed to address the piracy and counterfeiting problems faced by U.S. companies. Under the plan, China committed to: (1) significantly reduce IPR infringement levels; (2) issue a judicial interpretation by the end of 2004 and apply it to increase criminal enforcement of IPR violations; (3) conduct nationwide education and enforcement campaigns and increase customs enforcement; (4) ratify and implement the WIPO Internet Treaties as soon as possible and extend to the local level the ban on the use of pirated software in central and provincial government offices, and (5) establish an IPR working group under the JCCT. In line with the JCCT mandate, the working group seeks to ensure that China significantly reduces IPR infringement levels.

While we recognize that China has expended significant effort to improve the protection of intellectual property, much work remains to be done. We have not seen any significant reduction in IPR infringements throughout China. We continue to impress upon the Chinese that action plans and commitments must translate into actual reductions in infringing activity. As former Secretary Evans said earlier this year: "Process isn't progress. Results are progress."

#### HISTORY AND BACKGROUND OF THE JCCT PROCESS

It may be useful to provide a brief background and some history of the JCCT, before I detail the broader set of issues and initiatives being implemented by the Administration to address the problems of the piracy and counterfeiting of IP. There are several functions of the JCCT that range from technical consultations to meetings by high level U.S. and Chinese officials that have resulted in measurable concrete results that have benefited U.S. intellectual property owners.

The JCCT was established in 1983 to serve as a government-to-government consultative mechanism that provides a forum to resolve trade concerns and promote bilateral commercial opportunities. Issues addressed by the JCCT over the years have included industrial policies, services and agriculture. In recognition of the critical role intellectual property plays in our economy and the serious effects of piracy and counterfeiting, an intellectual property rights (IPR) Working Group was established at the 15th annual meeting of the JCCT in April 2004. That meeting of the JCCT was chaired by former Commerce Secretary Donald Evans, former USTR Robert Zoellick and Chinese Vice Premier Wu Yi.

The most recent meeting of the IPR Working Group was just a few weeks ago here in Washington when I, along with Ambassador Shiner, met with our Chinese counterpart, Vice Minister Ma Xiuhong. We discussed the past progress made and expectations regarding various IPR-related commitments made by the Chinese at the 2004 JCCT to address piracy and counterfeiting of American ideas and innovations.

The process is working and we are beginning to see results. For example, one recent positive development has been the issuance of a new judicial interpretation by the Chinese Supreme People's Court intended to increase the incidence of criminal prosecution of IPR infringements in China. The issuance of the interpretation last December is consistent with the commitments made by Chinese officials at the 2004 JCCT. The interpretation serves as a guideline to lower courts on case acceptance and minimum thresholds necessary for conviction of a criminal IP offense. According to statistics provided by the Chinese at our latest meeting, criminal IPR case filings are up almost 19% (18.9%) since the issuance of the new judicial interpretation. While the interpretation appears to significantly reduce the criminal thresholds for trademark and patent counterfeiting and copyright piracy, we have identified a number of potential concerns with the judicial interpretation, including the methodology for determining the value of infringing goods, the criminalization of exports

and certain copyright offenses, and the treatment of repeat offenders. We continue to study the interpretation and will monitor its implementation by the Chinese courts.

During JCCT IPR Working Group meetings on May 26 and May 27, 2005, a full complement of technical experts from both sides discussed ways to work better together to combat IP theft in China. In particular, U.S. and Chinese law enforcement agencies exchanged views on increasing information and expertise sharing, and cooperation in individual cases, including with respect to investigation techniques. The USPTO and the U.S. Copyright Office conferred with their counterparts on a number of topics, including ways to enhance IPR monitoring of trade fairs in China and the expansion of crackdown campaigns that closed down the infamous “Silk Alley” Market in Beijing and a number of illegal street stalls and kiosks in Shanghai that sell counterfeit and pirated name brand and luxury goods. I hope and expect that this meeting of the JCCT IPR Working Group is only the beginning of continuing and substantive technical dialogue.

Secretary Evans’ successor, Secretary of Commerce Carlos Gutierrez, earlier this month completed his first trip to China to promote the Administration’s fair trade agenda and discuss issues of ongoing concern. His central message on IP was that China must deter widespread infringements of intellectual property rights through strict enforcement. Secretary Gutierrez will co-chair the 2005 JCCT scheduled in July in Beijing, along with U.S. Trade Representative Portman and Vice-Premier Wu Yi.

As part of our continuing staff-level consultations with the Chinese, we—have developed—a mechanism to refer appropriate cases to China’s Ministry of Commerce with a formal request for review and appropriate response. Under this mechanism, U.S. companies—may report infringing activity to the Department of Commerce and provide all relevant information regarding the nature of the infringement and all efforts taken to resolve the matter. If a company has attempted to obtain or enforce intellectual property rights via the foreign country’s legal system and its efforts have been unsuccessful, due to either systemic flaw or unfair application of the laws,—the Commerce Department may be able to engage the foreign government on the issues raised by the company.

#### SCOPE OF GLOBAL IP PIRACY AND COUNTERFEITING PROBLEM

The background for the need for these efforts is well-known, as you increasingly hear about IP piracy and counterfeiting issues from your constituents and on the nightly news. Increasingly, both the United States and our trading partners are relying on IP to drive economic growth. This is because competitive success in a market economy depends more and more on the IP assets held by an institution—from the skills of its employees to the results of its latest research. IP-based businesses, such as the software and entertainment industries, now represent the largest single sector of the U.S. economy.

According to the International Intellectual Property Alliance, U.S. copyright industries continue to lead the U.S. economy in their contributions to job growth, gross domestic product (GDP), and foreign sales/exports. Between 1977 and 2001, the U.S. copyright industries’ share of the GDP grew at an annual rate more than twice as fast as the rest of the U.S. economy. In 2002, the U.S. “core” copyright industries’ activities accounted for approximately 6 percent of the U.S. GDP (\$626.6 billion).<sup>1</sup> In 2002, the U.S. copyright industries achieved estimated foreign sales and exports of \$89 billion, leading all major industry sectors, including motor vehicles (equipment and parts), aircraft and aircraft parts, and the agricultural sector.<sup>2</sup>

Unfortunately, the economic benefits of capitalizing on intellectual property rights (IPR) have captured the attention of pirates, organized crime, and terrorists. The global criminal nature of IP piracy has effects in other areas as well. As former U.S. Attorney General John Ashcroft reported: “In addition to threatening our economic and personal well being, intellectual property crime is a lucrative venture for organized criminal enterprises. And as law enforcement has moved to cut off the traditional means of fund-raising by terrorists, the immense profit margins from intellectual property crimes risk becoming a potential source for terrorist financing.”

<sup>1</sup>“Copyright Industries in the U.S. Economy: The 2004 Report,” Stephen E. Siwek, Economists Inc., prepared for the International Intellectual Property Alliance. “Core” industries include: newspapers, publishing, recording, music, motion pictures, radio, television broadcasting and computer software.

<sup>2</sup>*Id.*

## USPTO AND DOC EFFORTS TO COMBAT PROBLEM

Given these threats to U.S. economic interests and our national security, the USPTO and our colleagues in the Department of Commerce are working hard to curb IP crime and strengthen IP enforcement in every corner of the globe. Indeed, former Secretary Evans heavily emphasized this issue, and Secretary Gutierrez has indicated it is a top priority for the entire Department. Because American IP owners compete in a global marketplace, we must expand our efforts to promote IP protection internationally. We must make sure that American IP owners have sufficient knowledge and legal tools to fight piracy and counterfeiting. We also must provide foreign countries technical assistance on drafting and implementing effective IP laws and promoting the effective enforcement of IP rights.

*The Role of the USPTO in IP Policy*

The passage of the American Inventors Protection Act of 1999 (AIPA) (P.L. 106-113) set the stage for the USPTO to advise the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues, including IP protection in other countries. USPTO is also authorized by the AIPA to provide guidance, conduct programs and studies, and otherwise interact with foreign IP offices and international intergovernmental organizations on matters involving the protection of intellectual property.

Our established Offices of International Relations and Enforcement carry out the functions authorized by the AIPA. These include (1) working with Congress to implement international IP treaties; (2) providing technical assistance to foreign governments that are looking to develop or improve their IP laws and systems; (3) training foreign IP officials on IP enforcement; (4) advising the Department of State and the Office of the U.S. Trade Representative (USTR) on drafting/reviewing of IP sections in bilateral investment treaties and trade agreements; (5) advising USTR on intellectual property issues in the World Trade Organization (WTO); and (6) working with USTR and industry on the annual review of IP protection and enforcement under the Special 301 provisions of the Trade Act of 1974. The USPTO also represents the United States in United Nations bodies, such as the World Intellectual Property Organization (WIPO), to help set the international standards for IP protection and enforcement.

*National Intellectual Property Law Enforcement Coordination Council (NIPLECC)*

The USPTO serves as the co-chair of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), which is tasked with coordinating domestic and international intellectual property law enforcement. NIPLECC was launched in 1999 to ensure the effective and efficient enforcement of intellectual property in the United States and worldwide. NIPLECC's coordination activities ensure that government enforcement efforts are consensus-based and non-duplicative. NIPLECC has developed a comprehensive database that includes all recent IP law enforcement training provided by the U.S. government and many associations to developing and least developed nations. It is also developing legislative suggestions to improve domestic IP laws related to enforcement. We look forward to continuing our efforts in NIPLECC.

*Enforcement Training and Technical Assistance*

The USPTO provides a variety of IP enforcement training and technical assistance activities. These programs are designed to foster respect for IP, encourage governmental and right holders' efforts to combat infringement, and promote best practices in the enforcement of IPR. Our technical assistance and capacity building initiatives grew out of a desire to promote IP protection and assist developing countries in meeting their obligations under the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement. In addition, we have responded to an increasing number of requests by foreign governments for such training and technical assistance activities. Our efforts have had positive results in some countries, measured by decreasing levels of IP piracy and counterfeiting, and the implementation of stronger legal protections in many of the countries in which we have provided such training. Still, much work remains, including in China, where IP theft has not decreased.

Today, our efforts are aimed at: (1) assisting developing and least developed countries to meet international standards in the protection and enforcement of IP; and (2) assisting administrative, judicial, and law enforcement officials in addressing their enforcement issues.



*Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs)*

At the conclusion of the Uruguay Round in 1994, the resulting TRIPs Agreement presented WTO members with new obligations and challenges. The TRIPs Agreement sets minimum standards of protection for the various forms of IP and requires WTO members to provide for “enforcement procedures . . . that permit effective action against any act of infringement of intellectual property rights.” The TRIPs Agreement includes detailed provisions on civil, criminal and border enforcement measures designed to provide the owners of IP with the tools to protect and enforce their rights. Today, Developing Countries’ obligations’ under the TRIPs Agreement have fully entered into force. Least Developed Countries have until 2006 to comply with the bulk of the provisions, including the enforcement obligations.

Over the last several years, the USPTO has assisted countries around the world in establishing adequate enforcement mechanisms to meet their obligations under the TRIPs Agreement. In bilateral negotiations, we work closely with USTR to seek assurances from our trading partners of even higher levels of IP enforcement. We provide technical advice through the annual Special 301 process, the GSP review, the TRIPs Council review of implementing enforcement legislation, and in the negotiation of free trade agreements (FTAs).

Our approach to the on-going FTA negotiations has been to build upon the TRIPs Agreement. In other words, our negotiating position is that these trade agreements should follow a “TRIPs Plus” format by, among other things, expanding the minimum standards set out in the TRIPs Agreement. For example, by incorporating provisions of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, the FTA updates copyright protections and enforcement for the digital environment. In our advisory capacity, we will continue to work with the Department of State and USTR to conclude FTAs that provide strong enforcement and reflect a standard of protection similar to that found in United States law.

## INTELLECTUAL PROPERTY ISSUES AND USPTO APPROACH IN CHINA

Due to the rapid increases in piracy and counterfeiting in China, we recognize that U.S. companies face enormous IPR protection and enforcement challenges and that their losses there are mounting daily. At the same time, the pressures of the competitive global marketplace, criminal elements, and protectionist and non-tariff barriers, make these challenges increasingly more sophisticated. That is why the USPTO’s team of experts has developed comprehensive work-plans to address the rising IP problems facing these countries. While the USPTO does not have the lead on trade policy issues, which is the mandate of USTR, we have devoted significant resources to making progress in improving China’s IPR regimes for our industries, right holders and this Administration.

The Bush Administration understands that IP is a vital component of our nation’s economy and that this Administration’s focus on combating global piracy and counterfeiting has produced a solid track record of real results. The STOP Initiative, which I will discuss in more detail later, is a continuation of these efforts by providing additional tools to protect American workers from counterfeiters and pirates who are robbing billions of dollars from the U.S. economy.

## CHINA

Unfortunately, problems persist and our concerns about IP enforcement in China continue to grow. Despite China’s membership in the WTO and its obligation to comply with the TRIPs Agreement, as well as a series of bilateral commitments made over the past 10 or more years, the lack of effective IP enforcement in China is a major problem for U.S. business interests, costing billions of dollars in lost revenue and perhaps tens of thousands of U.S. jobs. While China has done a generally good job of creating laws to comply with its WTO commitments, IP enforcement problems remain pervasive. These problems run the gamut from rampant piracy of movies and business software to counterfeiting of consumer goods, electrical equipment, automotive parts, and pharmaceuticals.

I am very pleased Secretary Gutierrez has cited IP protection as a key issue in U.S. trade ties with China. During his first trip to China as Secretary of Commerce, Secretary Gutierrez urged China to deter widespread infringements of intellectual property rights through strict enforcement. Secretary Gutierrez told business officials on the first day of his visit to China “Intellectual property rights violations are a crime and we don’t believe we should be negotiating crimes with our trading partners.”

### *IP Problem in China*

Estimates from the computer software and automotive parts industries are illustrative of the scope of the problem. The software industry estimates that more than 90 percent of all software installed on computers in China in 2003 was pirated.<sup>3</sup> The automotive parts industries estimate that counterfeit automotive parts production costs the industry billions of dollars in lost sales. One industry group estimates that legitimate automotive companies could hire 210,000 more employees if the counterfeit auto parts trade is eradicated.<sup>4</sup> China is a leader in counterfeit goods in this industry.

In the automotive arena, most counterfeiting involves parts that need to be replaced frequently, such as oil filters, headlamps, batteries, brake pads, fan belts, windshields, and spark plugs. For example, DaimlerChrysler, BMW, Audi, Volvo, Mitsubishi, and Toyota report that even though a factory in Guangdong Province has been raided three times in a two-and-a-half-year period, it has been allowed to continue making windshields stamped with their brand names for sale in the world market.

According to the World Health Organization (WHO), 10 percent of the medicines in the world are counterfeit, with China being one of the main centers of counterfeit production. Rudolph Giuliani offered the following testimony before a Senate Committee in June of last year:

“An August 30, 2002, Washington Post story cites the Shenzhen Evening News in reporting that an estimated 192,000 people died in China in 2001 because of counterfeit drugs. Another news story reported that as much as 50 percent of China’s drug supply is counterfeit (Investor’s Business Daily dated October 20, 2003).”<sup>5</sup>

While no definitive statistics exist on total U.S. job losses attributable to IP piracy and counterfeiting in China, there is no doubt piracy and counterfeiting deprive the government of billions of dollars of much needed tax revenue, cost thousands of jobs, and injure the domestic software industries.

### *China’s Enforcement Issues*

The Chinese IPR enforcement environment today is complicated by a variety of different Chinese and foreign interests, including Chinese industrial policies, trade policies, the interests of foreign investors, and the interests of Chinese domestic enterprises. In this environment, our right holders increasingly look to adequate enforcement of criminal IPR laws in implementation of China’s WTO commitments as a key to reducing counterfeiting and piracy rates in China. China, it should be noted, does not lack for quantitative enforcement. Each year, tens of thousands of enforcement actions are undertaken. However, these actions are typically pursued by administrative agencies, which impose non-deterrent penalties.

This Administration has been pressing China to impose prison sentences and/or stiffer fines on violators of IPR since fines and other penalties imposed are too modest and provide little or no deterrence. In December 2004, two branches of China’s government—the Supreme People’s Court and Supreme People’s Procuratorate (prosecutor) issued a new “Judicial Interpretation” for criminal IPR infringements. The new Interpretation expanded the scope of violations punishable by prison sentences by lowering the value threshold necessary to initiate a prosecution, but on the enforcement side took a significant step backwards with respect to violations committed by repeat offenders. The new Interpretation was also deficient in many other areas of concern to industry and foreign governments, including, for example, coordination among China’s civil and administrative systems as well as the relationship with other IP laws. Furthermore, the new Interpretation complicated matters by allowing infringing goods to be valued based on their street value, not their legitimate value, thus sanctioning declarations by the infringer as a measure for determining whether or not Chinese valuation thresholds were met dictating prosecution. Equally disconcerting was that unfinished or offsite products were exempt in assessing that value.

Many of the challenges that China encounters are at least partially due to deficiencies in its own system, including extensive corruption, local protectionism, and lack of interagency coordination. Some of the issues we have raised with Chinese colleagues include: the use of mandatory sentencing guidelines for IPR crimes; support for specialized IPR courts which have greater independence from local financ-

<sup>3</sup>Ibid. Key Findings: BSA and IDC Global Software Piracy Study.

<sup>4</sup>Motor and Equipment Manufacturers Association, September 2003.

<sup>5</sup>See Statement of Rudolph W. Giuliani before the Senate Government Affairs Committee, Permanent Investigations Subcommittee, *Oversight Hearing on Safety of Internet Drugs* (July 16, 2003).

ing and control; establishing appropriate procedures for investigation, prosecution, and conviction of IPR criminals; and effectively addressing trans-border IPR crime, as well as IP crime committed over the Internet.

It is important to recognize that there is a Chinese domestic constituency also seeking enhanced IPR protection and enforcement. As the economy grows, domestic interest in IP, particularly in the more developed cities on China's seaboard, is increasing dramatically. China's deficient IP protection and enforcement hinders Chinese software engineers, inventors, and movie producers who have to struggle with a severely deficient domestic market as their principal source of income. Chinese IP owners have become increasingly vocal proponents of stronger IP protection. One indication that IPR is attaining increased domestic importance is the number of trademark applications received by the Chinese Trademark Office (CTO). For the past two years, the CTO received more trademark applications than any country in the world. The State Intellectual Property Office is also growing rapidly and receives some of the highest number of filings for patent applications worldwide.

Growing domestic interest in IP protection and enforcement may be of small comfort to U.S. industry when the impact of piracy and counterfeiting on U.S. industry appears to be growing. U.S. Government statistics show a worsening situation. For example, USTR's 2005 Special 301 Report states that during 2004, 67 percent of all of the IPR-infringing goods seized at the U.S. border came from China.<sup>6</sup> Many industries also increasingly suspect that the Chinese government, by restricting market access, is providing free rein for counterfeiters, pirates, and criminals to exploit the void created by the lack of legitimate products. Many U.S. companies also complain of industrial policies that help create conditions for production of infringing products. Counterfeit Viagra, for example, dominates the Chinese market, while the legitimate product has been hampered by market access restrictions. Pirated movies appear in the Chinese market long before censors have approved the legitimate product. Other high-tech companies complain of standards setting, such as in wireless networking technology, which limits introduction of legitimate products or mandates technology transfer.

#### *USPTO's Efforts in China*

Under the direction of this Administration, the USPTO has been working extensively to reduce piracy and counterfeiting activity in China. First, we provide technical support to all agencies of the U.S. Government that are addressing these issues, including USTR, the Department of Commerce/International Trade Administration (ITA), the U.S. Department of Justice, the Department of Homeland Security, and the State Department.

The USPTO has an established team of experts on Chinese IP matters, which includes IP attorneys with detailed knowledge and background on patents, trademarks, copyrights, enforcement issues, and WTO/WIPO issues. Our cooperation with other U.S. government agencies extends beyond the trade agenda to providing support on strategies and to addressing transnational crime and transnational trade in counterfeit goods, as well as other issues.

*TRIPS review.* For example, we take an active role in the annual review of China's TRIPs commitments at the WTO, including primary responsibility for drafting many of the TRIPs-related questions. Three USPTO officials attended China's WTO review last year. We also actively participate in the APEC Intellectual Property Experts Group, which plays a constructive role in developing regional standards for IP, including cooperation on enforcement matters. Further IP initiatives in China supported by the USPTO are described below.

*IP attorney at U.S. embassy.* For two summers, with the active support of U.S. Ambassador Clark T. Randt, we stationed one of our IP enforcement attorneys, who is fluent in Mandarin, in our embassy in Beijing to help with IP enforcement issues in the region. Last fall, the USPTO was proud to continue this support by detailing this individual as attaché to the U.S. Embassy in Beijing for a three-year appointment to continue our Government's efforts to combat piracy and counterfeiting. This is the first time the USPTO has sent an official abroad for an extended period of time to assist in improving IP protection in a specific country, which highlights the seriousness of IP violations in China. Having an attaché stationed in China has enhanced the USPTO's ability to work with Chinese government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR in China.

*Meetings with Enforcement Officials and Other Influences.* One of the greatest challenges in China is ensuring that localities fully enforce national laws. To that

<sup>6</sup>[http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2005/2005\\_Special\\_301/asset\\_upload\\_file195\\_7636.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_Special_301/asset_upload_file195_7636.pdf)

end, the USPTO has held meetings with numerous local copyright, trademark, judicial, police, and prosecutorial enforcement officials throughout China to ensure that local officials fully understand their international obligations. We have hosted numerous delegations at the USPTO, with the objective of addressing this challenge. We have also worked with U.S. non-governmental organizations in support of rule of law efforts and training programs, including a Temple University program and Franklin Pierce Law School's annual summer program on intellectual property law in Beijing for American and Chinese law students.

*Training.* Recent efforts in China that we have supported include: training on criminal IPR with the support of the British Government and China's Ministry of Public Security; training on patent data protection and patent linkage with the State Intellectual Property Office and State Food and Drug Administration; training on "business methods patents" with the State Banking Regulatory Commission, State Council Legislative Affairs Office and the Development Bank of China; training with the World Customs Organization on border measures and criminal IPR; participation in Chinese sponsored programs on IP protection in Shanghai and on IPR strategies for multinational companies in Beijing; and a joint U.S. Semiconductor Industry Association and Chinese Semiconductor Industry Association training program on IPR in high tech industries, to name but a few.

*Bilateral meetings with trade groups.* We have also participated in a range of bilateral meetings and consultations with visiting U.S. trade associations such as the Intellectual Property Owners, U.S. Information Technology Office, Research and Development Pharmaceutical Association of China, Quality Brands Protection Committee, American Bar Association, International Federation of Phonographic Industries, Motion Pictures Association, Entertainment Software Association, Business Software Association, Association of American Publishers, U.S. Chamber of Commerce, to name just a few. We have also worked with some of these organizations to host enforcement conferences in such major cities as Beijing, Shanghai, Guangzhou, Wuhan, Nanjing, and Chengdu.

Both domestically and in Beijing, we have provided briefings for visiting congressional and judicial delegations, and we have provided training for State Department and Commerce Department officials at our various consulates, including participation at a regional training program in Hong Kong sponsored by the Economic Bureau of the State Department. Working with the Department of Commerce's Technology Administration and the International Intellectual Property Institute, we have provided technical assistance on copyright protection in Dalian and Shenzhen.

*Public relations efforts.* The USPTO continues to work through our own office of public affairs and the public diplomacy offices of the Embassy and consulates on providing an informed perspective on IP matters to the Chinese public and Chinese decision makers. Additionally, we are supporting State Department efforts to provide informational materials on U.S. IP practices to the Chinese public. We have also had several meetings at Chinese Universities. For example, I delivered a talk at Qinghua University, one of China's leading law and engineering institutions, on IP protection. In addition, my staff has delivered presentations at Sichuan Normal University Law Faculty, Qinghua Law Faculty, People's University and other institutions, as well as appearing on several television shows and being featured in newspaper articles.

#### *Supporting Businesses and Working with Law Enforcement in China*

Apart from these advocacy and training efforts, we are involved in developing practical strategies to support our businesses in handling problems in China. We have worked extensively with the Commerce Department on improving methods for handling business complaints involving unfair IP practices in China and have become involved with the STOP Initiative whereby we handle complaints involving IP, many of which involve China. We have worked on two leading programs associated with the U.S. Embassy involving IP: a "toolkit" on IP matters for U.S. businesses on the Embassy's website, and the "IPR Roundtable" that the Ambassador hosts each year.

*Meetings in China.* We have held meetings at the Canton Trade Fair to discuss IPR enforcement and complaints filed. We continue working with ITA, the American Bar Association, and many other organizations to provide better assistance to U.S. small and medium businesses. USPTO attorneys have been meeting with other foreign missions and trade associations to exchange ideas on innovative ways to promote better protection of IPR in China.

*Training programs for American businesses.* We have participated in training programs for our business people in the United States, to better enable them to forcefully address the IPR challenges they experience in China and, when necessary, bring well-founded complaints to our attention. Typically in conjunction with the

Department of Commerce, members of our China team have participated in programs in such cities as: Cincinnati, Ohio; Grand Rapids and Pontiac, Michigan; Charlotte, North Carolina; Miami, Florida; Minneapolis, Minnesota; Wichita, Kansas; St. Louis, Missouri; New York City and Long Island, New York; Waterbury, Connecticut; Boston, Massachusetts; Providence, Rhode Island; Portsmouth, New Hampshire; Fresno, San Jose and San Francisco, California; Salt Lake City, Utah; and Washington, D.C. A major focus of these efforts has been to address problems of small and medium enterprises, although larger enterprises have also benefited from participation in many of these programs as well.

*Workshops about China.* In addition to our work with the Department of Commerce, our China team is planning to roll out a series of intensive China workshops and seminars in several cities throughout the United States in 2005-2006. The first of these seminars is planned for Detroit, Michigan, in June. The program will provide companies with information about several useful topics, ranging from an overview of the IP protection and enforcement environment in China, specific information on how to file patent and trademark applications in China, how to use China's administrative and judicial systems to enforce IPR, and useful tips about how to locate and hire a local company to investigate IP infringement in China.

Another activity, as part of our ongoing efforts to assist U.S. businesses and IP owners in protecting their rights overseas, includes a seminar on the Chinese criminal justice system for IP offenses that we held in February of this year. The seminar introduced the Chinese criminal justice system to U.S. industry, government agencies, IP owners, and legal practitioners and included information on the recently amended Judicial Interpretation so they may better understand the system and use this information to their full advantage to combat counterfeiting and piracy. We sponsored a follow up program in April of this year.

Our China team has supported a number of programs to advise our companies on how to file a criminal IPR case in China. These programs have already been held in Guangzhou, Beijing, and Hong Kong with an additional program planned for Shanghai. In addition, we provide support to our own law enforcement authorities where possible on IP criminal matters. For example, we have supported the Joint Liaison Group on criminal justice cooperation in its efforts to facilitate better criminal IPR cooperation, and joined in training programs run by a number of different government agencies on criminal IPR matters. Our China team works closely with the Customs Attaché and Legal Attaché at the U.S. embassy as well as the Bureau of International Narcotics and Law Enforcement at the State Department on these matters.

*More United States Government Efforts in China.* Like Secretary Gutierrez, former Secretary of Commerce Evans believed in the strong enforcement of our trade laws and took innovative and proactive measures to strengthen the enforcement and compliance of our trade agreements. During his tenure, he tasked Commerce agencies, such as USPTO and the new Investigations and Compliance Unit within ITA's Market Access and Compliance Group, to coordinate their efforts to vigorously pursue allegations of IPR violations wherever they occur, especially in China.

*Delegations to China.* In 2003, then-Commerce Secretary Evans led a mission to China and highlighted China's lack of IPR enforcement. The Secretary met with high-ranking Chinese officials and reiterated a continuing concern—that effective IPR protection requires that criminal penalties for IP theft and fines are large enough to be a deterrent, rather than a business expense.

As a follow-up to the October 2003 trip, I led two delegations in 2004 for consultations with senior officials at China's patent, trademark, copyright, and other IP agencies. Our delegation also met with U.S. companies facing IP issues in China. The primary focus of these trips was to further the Administration's goals of improving the IP environment for U.S. companies doing business in China, and specifically of addressing widespread counterfeiting and piracy. We discussed several issues, including the need for improved criminal, civil, and administrative enforcement, the need for protecting copyrights over the Internet and China's accession to the WIPO Internet Treaties.

In January 2005, I traveled to Beijing as part of a second Evans-led delegation. We were fortunate to be able to meet with Chinese Premier Wen Jiabao and Vice Premier Wu Yi to discuss concerns over China's enforcement of IPR of American businesses. Ambassador Randt also hosted the third roundtable on Intellectual Property Rights, which was attended more than 250 government officials and business and industry representatives from the USPTO, the European Union, Japan, and China's IP agencies. In addition to providing the luncheon keynote address during the January roundtable, I announced the USPTO's new plans for IP technical assistance for Chinese IP-related agencies. Ambassador Randt was pleased that the

USPTO's offers of cooperative assistance were well received, and we are in the process of implementing these as well.

*Challenges and Recommendations concerning China*

While our trips to China have been well received, and we are pleased to note a continuing and increasing awareness among Chinese officials of the importance of IP protection and enforcement, we have not yet seen significant progress on most of the key issues. These issues include enhanced criminal enforcement, a deterrent administrative enforcement system, protecting copyrights over the Internet, and stopping the export of counterfeit goods. We are also interested in other developments, such as China's efforts to develop an IPR Strategic Plan for development of its IP assets, other industrial policy goals, legislative efforts to draft a Civil Code that may include IPR, and general rule of law efforts that could significantly affect the protection of IPR over the long run.

While we fully recognize that China needs to make drastic improvements in its IPR system to ensure that our right holders are fairly protected, we should not underestimate the steps that our businesses and government can take to reduce the risks of piracy and counterfeiting. The USPTO will continue working with small and medium-sized companies on how best to protect their valuable IP rights in China. One particular example is for companies to register all their trademarks promptly in China and especially, their Chinese language trademarks. Given the fast pace of China's economic development and the huge volume of trademark applications in China, companies should file for their marks early in their marketing cycle.

Globalization means that competitors can retrieve information about products not yet introduced in their country from a U.S. company's web site. Counterfeiting and piracy also originates from employees, agents, or distributors who have taken confidential information to engage in a competing operation. China's practice regarding protection of trade secrets by former employees who have signed non-compete agreements is different from the United States. We will continue to educate companies on how best to protect their intellectual property rights.

It is especially important we encourage our industries to work with us and the other U.S. agencies involved in improving China's IP protection and enforcement environment by: urging the fair and transparent implementation of China's IPR system; fully exploiting this system; providing us with detailed information on its deficiencies in order to reduce future risks of such activities; and supporting our bilateral and multilateral efforts to reduce the impact of these problems.

THE GLOBAL STRATEGIC TARGETING ORGANIZED PIRACY (STOP) INITIATIVE

We are pleased to discuss with you the STOP! Initiative, the most comprehensive intergovernmental agency initiative ever advanced to smash the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets. There are several important features of the STOP! Initiative that I'll mention:

*Hotline and Website*

First, the USPTO participates heavily in this initiative by managing a hotline, 1-866-999-HALT, established by the Department of Commerce to help businesses protect their IPR at home and overseas. The goal of the hotline is to empower U.S. business to secure and enforce their IPR by providing them the information they need to secure their patents, copyright and trademarks, and to enforce these rights here in the U.S. and abroad.

Callers receive information from IP attorneys with regional expertise on how to secure patents, trademarks, and copyrights, and on the enforcement of these rights. Businesses and innovators now have access to a place to learn more about the risks of global piracy and counterfeiting and how to protect their IP rights in both individual countries and in multiple countries through international treaties. In addition, we have established a link from our USPTO website to [www.stopfakes.gov](http://www.stopfakes.gov) on the Department of Commerce's website, which provides in depth detail of the STOP! Initiative.

*No Trade in Fakes Program*

The Department of Commerce is in charge of another important component of the STOP! Initiative, the no-trade-in-fakes program that is being developed in cooperation with the private sector. This is a voluntary, industry-driven set of guidelines and a corporate compliance program that participating companies will use to ensure their supply chains and retail networks are free of counterfeit or pirated goods.

*Increasing and Communicating Enforcement*

The STOP! Initiative will raise the stakes for international IP thieves by more aggressively pursuing perpetrators of IP crimes and dismantling criminal enterprises. STOP! also seeks to increase global awareness of the risks and consequences of IP crimes through public awareness campaigns, and creating and operating a website publicizing information about international criminal IP enforcement actions.

*Building Coalitions*

The ultimate success of the STOP! Initiative involves building coalitions with many of our like-minded trading partners, such as Japan, the United Kingdom, and France, who have all recently launched similar initiatives. We are seeking to continue working with our partners in the G-8, Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation (APEC) forum. Cooperation on new initiatives to improve the global intellectual property environment is essential to disrupting the operations of pirates and counterfeiters.

*International Outreach*

A delegation of U.S. officials from seven federal agencies, including Deputy Secretary of Commerce for Intellectual Property Steve Pinkos, recently kicked-off our international outreach effort to promote STOP! internationally. In April, our officials visited various capitals in Asia generating much interest and fruitful discussions. Just this week, our USPTO representative and officials from the other STOP! agencies are meeting with their counterparts and representatives from the private sector in five capitals throughout Europe. This week's second global outreach tour is an important opportunity to continue developing enforcement mechanisms to raise the stakes for pirates and counterfeiters and share proposals on how to make it easier for businesses to protect their innovation at home and abroad.

During these international visits, U.S. officials share information on our efforts to combat the theft of inventions, brands and ideas. Our efforts abroad are advancing our commitment by enlisting our trading partners in an aggressive, unified fight against intellectual property theft. Finally, we have tentatively planned that countries receptive to cooperation on STOP! will be invited to attend a meeting in Washington, D.C. (likely in the fall of 2005) designed to—formalize their participation and finalize—a work plan.

*Future STOP! Activities*

The USPTO has several future planned activities supporting our initiatives under STOP! The first involves our public outreach efforts. In addition to our China-related workshops and seminars for 2005-2006, my staff will also be embarking on an educational road show to various cities in the United States to educate small- and medium-sized businesses on what IPR are, why they are important, and how to protect and enforce these rights domestically and internationally. The first of these workshops took place in Salt Lake City on May 23 and 24, and already, we have found an enormous amount of interest in the program. We will replicate this program in other cities throughout several regions of the U.S. in the coming months.

We continue to work in WIPO to seek to simplify, streamline, and improve the cost efficiency of the trademark application process across borders to provide more efficient and less burdensome systems for right holders. We will continue to work closely with the IP community, STOP! team, and you to promote a legislative agenda that is designed to meet the huge challenge of combating piracy and counterfeiting. Tougher enforcement of our international trade laws is necessary for the growth of our economy and the creation of new jobs. In order to fully implement the STOP! Initiative, it may be necessary to reassess current legislation.

## CONCLUSION

Mr. Chairman, the JCCT process continues to provide a high-level government-to-government forum to examine and address the trade and commerce issues with China that are important to us all. While there is a lot of discussion about the problems regarding piracy and counterfeiting in China, it is my hope that the Subcommittee now has an increased understanding of how the process is working toward concrete, discrete solutions that benefit U.S. small businesses and owners of intellectual property.

As we look to the future, let me conclude on a positive note. The Administration is working on several fronts to combat the theft of U.S. IP through efforts, such as the STOP! Initiative. Although by all accounts counterfeiting and piracy appear to be growth "industries," there have been some recent successes in attacking the problem. Between 2001 and 2002, the software industry estimates that software piracy in Indonesia decreased from 89 percent to 68 percent. In South Africa, it fell from

63 percent to 36 percent. The motion picture industry has reported a decrease in piracy levels in Qatar from 30 percent in 2001 to 15 percent in 2002. In Bahrain, there have been dramatic and systemic improvements in IP protection and enforcement over the past few years. These include the signing of numerous international IP conventions and the virtual elimination of copyright piracy and counterfeiting in retail establishments.

There is some reason for optimism. I remain hopeful that with the continued support and partnership of the Subcommittee, we will be able to do even more to provide American businesses and entrepreneurs with the IP knowledge and protection they need. Clearly, in terms of the economy and national security, much is at stake. That is why our dedicated team of experts will continue to work tirelessly to protect American intellectual property all around the globe.

Thank you very much.

Mr. STEARNS. I thank you, Mr. Under Secretary. I will start with the first questions. This is going to be fun to ask you because I just want a yes or a no. And since you have been behind me here advising Henry Hyde to see if you can get a yes or no, I am going to ask you this question. So just a yes or no now.

You are a business and a businessman comes to you and says, you know, I had this property, this business that deals totally, exclusively, core assets are intellectual property, and I have got an opportunity to set up a shop in China and to work with the Chinese to develop this business and to do business with China in China with intellectual property rights associated with some of the Motion Picture Association back here. Do you think I should do it? Just yes or no.

Mr. DUDAS. No.

Mr. STEARNS. No, okay. So now, with that in mind tell me why “no” because that is the question that I was hoping you would answer because if you said yes, based upon your statistics in your opening statement and everything, I wouldn’t, as a businessman, go into China to develop something dealing with intellectual property rights. I would be very wary because not even going into business they are going to get my product if they come over here; there are many ways to get it. So answer the question “no”, why “no”?

Mr. DUDAS. And, again, you asked me to answer the question as my person opinion as a businessperson who a 100 percent of my assets are intellectual property, I think I can compare that to industries that are there right now. And I believe the industries have answered that in the affirmative, not as a “no.” But I look at the Motion Picture Association, the business software, others who 100 percent of their business is in intellectual property, the concern is that there is rampant theft of intellectual property. That is the very problem. It is the challenge that we face right now.

I think each of you had an opening statement that talked about that our country’s future to some degree depends on our ideas and the protection of our ideas. So while I answered in the negative myself—I am looking at myself—if all I had was one asset and it was intellectual property and I had no level of protection, I would be wary, certainly, of investing that.

Again, I will say that there are—the industries that are out there find that the market is attractive enough that they have found ways to invest; they have found ways to go forward. So I think the fact that many in the industry have still found it to be worthwhile because it is such a large market, such an important market.



And perhaps I might conclude that part of the theft is a part of just doing business; that is their overhead that they are going to lose because the market is so big. It is possible that industries make that calculation and view it almost as a business decision, but I think that is the very threat that businesses are facing is in terms of if you have a 99-percent piracy rate or a 92-percent piracy rate, the question is how much do you have to gain and how much do you have to lose. Again, evidence shows that they are willing to invest because—if I take moment, I know I am beyond yes or no—I believe that most industries see, and I certainly see, that the situation is getting better. The question is is it getting better quickly enough? Is it getting better as rapidly as we want to see it? And are we seeing it at the level we need to see? I think—

Mr. STEARNS. Yes.

Mr. DUDAS. [continuing] businesses who actually invest the money feel that it is and it will.

Mr. STEARNS. And as I understand it we have a trade surplus in intellectual property, so that is one of the few areas where we have a surplus, and so we want to protect it.

Your testimony shows there is a plant in China that produces windshields illegally, and they are stamped with major auto manufacturers name on them, so they are replicating these windshields. This plant was raided three times over a period of 2.5 years, yet it continues to operate. So if that is an example of China's effort to stop just the windshields being replicated based upon American auto parts, you realize that either, one, the enforcement mechanism is not strong enough; two, they are incorrigible to people because they have realized the penalties are so weak.

So my question is can you influence—and maybe you can start in telling me—are there civil and criminal penalties and are they severe enough and can you have any influence to make them enforced? And is China committed to doing this? I mean that is the feeling we have that this is sort of a misdemeanor crime that China doesn't even care about. In many countries you can go into and you go down a street, you just find vendor after vendor selling—for example, in Singapore. Well, we sat down with Singapore and we worked it out. And when I was in Singapore, you could go down these streets; you couldn't find it, which was good. It is good for American consumers and it is good for intellectual property rights.

But now I was recently in Barcelona, Spain and there was people with all kinds of movies, DVDs, right there on rugs just tens and tens of these movies. So my question basically, you know, how do you get the Chinese government to put in place the enforcement mechanism and the penalties, whether civil or criminal, to make this thing real?

Mr. DUDAS. You get to the very heart of the problem. Is there a deterrent, an effective system of enforcement within China? And certainly, within the United States I think we lead by example. Where there have been problems with intellectual property theft, often there is a bill that comes to Congress; it passes, it is implemented, and it is publicly displayed, what enforcement has occurred. And that is what we are working with the Chinese on as well. Is

the system that they have in place creating a deterrent for piracy and counterfeiting, or is it considered a cost of doing business?

And your question about what kind of system do they have, they have an administrative system and a civil system and a criminal system. Their administrative system is unlike what we have here in the United States. We have pushed very hard in China.

Mr. STEARNS. It is unlike the one we have?

Mr. DUDAS. The administrative system is unlike what we have in the United States. And it is a different area of the law that they have there. What we have pressed for through the JCCT was we want to see stronger criminal prosecutions; we want to see lower thresholds. And what we have seen in December of last year as a result of the JCCT was a new judicial interpretation. They came out and gave guidance to court systems, to prosecutors, to the procurator in China that basically directed how criminal IPR violations should be handled.

The Chinese came and reported to us that in the last several months they have had about a 19-percent increase in criminal violations. That is a promising statistic. But what is most important—and I think what you are getting at in your opening statement and what we are getting at with the JCCT—is we must see an absolute result that we can understand in terms of metrics, and that result will be more legitimate goods being sold in China. And that is where we are working toward with the Chinese. So we see progress. The difference between delegations I led to China about 2 years ago versus last year, I met with agency heads with the Food and Drug Administration, with the intellectual property offices in China after the JCCT in going with the Secretary of Commerce then Evans, we met with the premier, the vice-premier Wu Yi; you could see that there were differences. Well-known marks, certain marks that had never been protected, U.S. names, trademarks that had no protection in China were now being protected. We established many more cooperative efforts where we give technical assistance to the Chinese patent office or we give it to the Chinese trademark office.

At the end of the day, the question comes down to, however, Congressman Green had pointed to the fact that our seizures at our borders, two-thirds of those seizures of counterfeited and pirated goods came from mainland China. That must come down. We must see more legitimate goods being sold there. There is a commitment from what I have seen and heard from the premier to the vice-premier, but that commitment needs to be shown in actions and results.

Mr. STEARNS. My time has expired. The ranking member.

Ms. SCHAKOWSKY. There is somewhat of a credibility gap, though, Mr. Dudas, because Beijing has the ability to find and jail a trade union organizer or sympathizer at will. Do you really believe that if a government of China decided to, that it couldn't stop counterfeiting tomorrow if it really put an emphasis on that?

Mr. DUDAS. I don't know that I am an expert enough on the Chinese government to know whether or not, but that is certainly one of the issues we have, is the political will there to get that done? Are we seeing any results? I can tell you again that we have seen dramatic differences within the last 2 years. I think your question

goes to the heart again. Are those differences enough? Is the political well-being shown to the level that we think is necessary and sufficient?

Ms. SCHAKOWSKY. I wanted to ask you some questions about workers' rights and labor, the unfair, illegal advantage that China gains by suppressing workers' rights and artificially keeping wages low. I am going to ask them all at once basically. A little over a year ago the Administration convened four Cabinet secretaries to announce the decision to reject the AFL-CIO Section 301 Petition, alleging that China's egregious repression of workers' rights constituted an unfair trade practice. And at the time, the four Cabinet secretaries conceded that there were workers' rights problems in China, but they would address these through dialog and engagement. So you have had over a year now to dialog with the Chinese government over those very serious issues. Can you tell me what concrete improvements in Chinese workers' rights have been made in the last year? In particular, has there been any progress in reforming China's labor laws, which prohibit the formation of independent unions and the right to bargain collectively? Have any Chinese workers actually formed an independent union, a real independent union? And aside from Labor Secretary Chao's visit to China last summer and a couple of non-binding letters of understanding that were signed at the time, what other actions has the Administration taken to ensure progress on workers' rights, human rights, and democracy found in China? And finally, I want to just ask given the slow progress in the last year, would you consider, would the department consider accepting the AFL-CIO 301 Petition if it were re-filed? Do you think this issue needs to be addressed with more urgency and a higher priority, or are you satisfied with the progress that has been made so far?

Mr. DUDAS. I will open by thanking you for your questions, and I have to tell you, in your opening statement you mentioned that there might have been some reluctance to testify. I can assure the committee there was no reluctance to testify. I had a person concerned that there are areas of expertise I do not have. I am certain I will disappoint you with my answer that I have really no knowledge on that front. My expertise is limited to intellectual property. I am happy to bring those questions to the appropriate folks within the Administration.

Ms. SCHAKOWSKY. You know, I just want to tell you, I think that in some ways that this is indicative of the various levels that intellectual property rights, as opposed to workers' rights, environmental rights are placed. This is not a criticism of you, but rather it would have been a good thing, I think, since it is not unknown that many of us are concerned about these issues of labor rights. You know, when you have got a situation that it has been reported that many child workers aged 12 to 15 migrate to the southern coast of China and end up working in these special economic zones using false identify papers, according to Hong Kong news reports, instead of acknowledging the lack of adequate information, officials at the Labor Ministry "claim that no government figures are available because child labor is not a problem in China." Now, you probably know enough—well, let me ask you is child labor a problem in China?

Mr. DUDAS. I don't have the expertise to answer that question.

Ms. SCHAKOWSKY. In 2000 worker rights advocates affiliated with the Hong Kong Christian Industrial Committee reported that McDonald's Happy Meals toys were being produced by a supplier that employed child labor from mainland China. Children as young as 14 were earning \$3 for 16 hours of work each day. So what has your agency done to investigate this allegation and to prevent similar incidents from occurring in the future?

Mr. DUDAS. I don't know what our agency has done and only, again, because I am solely committed to intellectual property. But I would welcome the opportunity to supply you with answers to these questions.

Ms. SCHAKOWSKY. Well, I have a number of questions that, you know—

Mr. STEARNS. We are going to go to a second.

Ms. SCHAKOWSKY. Well, he is not going to know in a second round the answers to my questions either. And, you know, I just think that in our zest here for low-cost goods for developing and increasing this relationship with China that we should not only be concerned with what I do agree is the future comparative edge for the United States of America, and that is our brain power, our technological advantage, our intellectual property, but that we have to put as much emphasis, I believe, on looking—because otherwise, we then become supportive of a real race to the bottom, which ends up affecting our workers at home. And the interests of business and multinational corporations and protecting the rights of intellectual property or any kinds of property, while they are important, human capital is very important too. So I can submit these to the department for answers.

Mr. STEARNS. I thank the gentlelady. The gentlelady from Tennessee, Ms. Blackburn.

Ms. BLACKBURN. Thank you, Mr. Chairman, and I thank you for working on this issue. And, Mr. Dudas, I thank you for being with us today. I certainly appreciate it. I represent a little bit of Nashville, a little bit of Memphis, so I am a little bit country and a little bit rock and roll and real concerned about intellectual property. And so I thank you for being here with us today. As a matter of fact, I am doing a hearing or a listening session, if you will, over on Music Row in Nashville on Sunday with some of our folks over there. We are looking at the impact on the small business entertainment community, the impact that intellectual property has on our economy and the impact that is coming from China and how we fill that. And, you know, our State of Tennessee, when you look at State revenues, \$26 billion budget, about \$14 billion of it comes from the State. About \$1 billion is a direct result of entertainment products. So when they steal, we squeal. And it hurts.

So let us talk about this for a second in terms of percentages. I understand that 85 percent of the music that is sold in China is pirated. I understand that 95 percent of films is pirated. And these are troubling, troubling numbers. And, you know, we accept and we understand it is a cultural difference. You know, when something is printed here it is copyrighted and you own it. When something is printed there it is public. And there is a different level of respect for that creative energy, but I really am protective of this creative

community that we have here. I think that it is worth protecting. And they are great people, and by and large they are small business people.

So does the Administration—do you all have plans to raise these percentages and raise this issue with them and bring it to pursue it before the WTO? Because it is such an egregious violation. What is the plan there?

Mr. DUDAS. Commenting generally on what you said, you are absolutely right that the United States has—it is in our Constitution—how fundamental the protection of intellectual property rights is. It went without a vote; it went with out debate. It was clearly understood from the Framers of the Constitution through today what patents and copyrights and trademarks and IP does for our country.

The answer to the statistics that you have spoken of, yes, those are industry-reported statistics. Some you even hear higher from industries. Some industries have said in the business software that they see 92 up to 99 percent. That is something that must be addressed, and I can assure you it is being addressed within the JCCT where we are very specific talking just specific points that we are making with specific actions that we expect the Chinese to take in order to reduce these levels. We have also gotten overall promises they will reduce these levels. As I mentioned earlier, what is important at the end of the day will not be more promises or more discussions of crackdowns or anything else other than having more legitimate product sold in China, the absolute result.

On your question about a WTO action, the United States has kept all options open vis-&-vis China. That is a decision that it has ultimately made out of the office of the President's United States Trade Representative. But I can tell you that China last year was put on this special priority watch list. There is a plan to invoke the transparency provisions of the TRIP agreement, which basically says we want to see from you, China, what kinds of piracy levels you see. We will have requests for information to find specifically what is in there. There is working going on right now with the industries you have mentioned to find out, to gather evidence and gather information in case a WTO procedure is taken. So those options all remain open.

On another front, the Joint Commission on Commerce and Trade has a very cooperative relationship at the highest levels of the U.S. Government and Chinese government. But we have laid out very specific line-item actions that we believe they should take to reduce the level of piracy and counterfeiting. And our point is we believe this will make a difference; this has worked in the United States and in other countries. But at the end of the day what is important is that you reduce your levels of IPR infringement—

Ms. BLACKBURN. But we—

Mr. DUDAS. [continuing] that would be the test.

Ms. BLACKBURN. Yes, we would just like to see you all a little quicker on the uptake on following up with some of this. Let us go back. You said that China has a—I think my time is about to expire and I do have another group of questions I think I will start while they are—okay. You said 19-percent increase in their criminal prosecutions, and I am familiar with their saying they have

done 40,000 raids in the past few months, and I think we are all familiar with “Silk Alley,” that closing that took place in January. So what are we seeing as far as prosecutions, convictions, and penalties? Is there an increase that you all can substantiate, not just what they say? But can you all substantiate this and point to some things other than the Golden Sciences Technology’s decision that we got out of Hong Kong last year, which was a 5-year process to get something done? So where are you on that? Give something more specific if you will, please.

Mr. DUDAS. Well, on that front on the specifics on criminal prosecutions we are relying—just 2 weeks ago—I am relying on the documents they gave us to show that there was a 19-percent increase in criminal prosecution—

Ms. BLACKBURN. Are they listing them—

Mr. DUDAS. [continuing] due to—

Ms. BLACKBURN. [continuing] and—

Mr. DUDAS. [continuing] they are not listed, and that is part of what is important to do if you consider a WTO procedure to be looking at the transparency provisions where you say to the government we need to see all of the information that we need. Again, that is a process that does not come out of my office. It comes out of the United States Trade Representative. But in the out-of-cycle review, it was noted that that is something that the United States will be looking at is getting that information.

Ms. BLACKBURN. Okay, and the issue is raised—

Mr. DUDAS. An issue has been—

Ms. BLACKBURN. [continuing] is what you are saying. You have raised that. I think that is part of the frustration. When we look at an industry that is so important to our community and your friends and your neighbors and the people you see and you work with and you cross paths with every single day. And they are getting ripped off. They make an independent film, and then when they go to sell those video rights, they can’t sell them in Southeast Asia, and the reason is the pirated copy has made it to the streets. So then their rights are worth nothing. You have authors—we have a big publishing industry in Middle, Tennessee, a lot folks writing a lot of books, different genres, and they can’t sell the rights on those books.

So, you know, understanding that it is a different culture and accepting that, I hope that you will take to heart our frustration on behalf of our constituents who comprise a wonderful creative community. We don’t want to lose them. And it is encouraging to us to see your aggressiveness. We need to see more aggressiveness, and not just in writing, but in some actions, something that is quantifiable so when I step before this music industry on Sunday afternoon to do a listening session—and I have got several small business/entertainment industry folks in front of me, I can say let me tell you what the U.S. Government and this Administration is specifically doing to protect your right to exercise your giftedness and your talents in order to earn a living. And that is what I don’t have chapter and verse, and that is what I want to see, chapter and verse. And I appreciate so much that you would take your time and come here and visit with us on this issue today because it is an economic issue. It is a jobs issue. It is preservation of an indus-

try issue for me and for my constituents. Thank you, Mr. Chairman. I yield back.

Mr. STEARNS. I thank the gentlelady. The ranking member is recognized in unanimous consent.

Ms. SCHAKOWSKY. I could have unanimous consent to insert into the record a report called "The Struggle for Workers' Rights in China."

Mr. STEARNS. By unanimous consent, so ordered.

[The report is available at [http://www.solidaritycenter.org/publications/jfa\\_china.cfm](http://www.solidaritycenter.org/publications/jfa_china.cfm)]

Mr. STEARNS. I told my colleagues we are going to go around for a second round. With Mr. Dudas here, we might as well just camp out here for a while if we have got him here. And he has been kind enough to stay, so I will start with another round.

Mr. Dudas, we just had a vote on the WTO whether we should leave the WTO. And, as you know, every 5 years we have this vote, and the vote overwhelmingly lost. But there were, I think, about 33—

Ms. SCHAKOWSKY. 85.

Mr. STEARNS. 85 people who voted "yes." And I have been on both sides of this issue. Dealing with intellectual property rights, is there any response to the WTO to handle this? Can a WTO do anything to China? I mean, I know your boss is going for another round of negotiations out to China in July, I guess it is? Is that correct? Secretary Gutierrez will co-chair the 2005 JCCT schedule in July in Beijing along with U.S. Trade Representative Portman and the Chinese Vice-Premier. And you are talking to the Chinese, but why isn't there a two-prong approach going through the WTO?

Mr. DUDAS. Well, WTO procedures are one potential avenue. As I mentioned, the Administration is keeping all avenues open. The—

Mr. STEARNS. That is just so weak that you don't think it works?

Mr. DUDAS. I will go to another instance of whether WTO actions have worked. There is something called geographical indications—

Mr. STEARNS. Yes, that is good. If you can give me an example of what WTO works, I would like to hear that, dealing with China.

Mr. DUDAS. That is outside my expertise, I apologize, but in the semiconductor industry I believe a WTO action was taken—

Mr. STEARNS. But does it work with intellectual property rights?

Mr. DUDAS. Well, I can give you an example where it has worked with the European Union—

Mr. STEARNS. Okay.

Mr. DUDAS. [continuing] on an issue of geographical indications. The United States took a case against the European Union on something called geographical indications. Essentially, you want to be able to protect Idaho potatoes and say that Idaho potatoes come from Idaho. Certainly, a number of European nations want to protect certain kinds of cheeses, and the United States has a system that does protect certain kinds of cheeses. Parmigiano-Reggiano comes from a certain region in Italy. That is a geographical indication that is protected in the United States. However, Idaho potatoes and Florida oranges were not protected in the European Union. The USPTO working together with the United States trade

representative, USTR took a case on that through the WTO and that came out very favorably for the U.S. interests saying they were insufficient—

Mr. STEARNS. Why don't we have a case going to WTO or do we have a case going to WTO on intellectual property rights asking for them to assess China or to put tariffs on them for this theft of our property rights?

Mr. DUDAS. I think that is under consideration when I say all options are open, whether or not to take a case to China. There are a number of issues—before you would ever take a case you want to make sure you have your evidence lined up perfectly in a row—

Mr. STEARNS. You don't think there is enough evidence?

Mr. DUDAS. Well, I think the United States trade representative is gathering evidence right now, working with—

Mr. STEARNS. Would you personally—your office think there is enough evidence now to make the case that we could go to the WTO?

Mr. DUDAS. I don't know that I have—I would have to look at the very specific evidence—

Mr. STEARNS. Well, let me just remind you now, your title as the expert here is Under Secretary of Commerce for Intellectual Property. So if I have to go to anybody, I assume I would go to you to find out if there is enough evidence—and you have just advised me if you had a company on intellectual property rights you would not go to China to do business. So obviously, there is enough evidence in your mind, so I just can't understand why we don't have a two-prong approach: negotiate but at the same time move forward with a case against China in the WTO. That is what the WTO is for.

Mr. DUDAS. Well, and I think those are—there are certainly negotiations going on and the discussions and decisionmaking process about whether or not to invoke WTO procedures. Again, I can tell you it is—the United States trade representative has said we are looking at evidence. We are also looking at the transparency provisions. These are—

Mr. STEARNS. I think you make a weak case when you say we are looking at the evidence. I mean, I think the evidence is clear. The question is do you want to act?

Mr. DUDAS. Well, let me be clear—

Mr. STEARNS. Unless you are saying that the evidence now is dubious that they are stealing our intellectual property rights.

Mr. DUDAS. Well, I think what I am saying is there is discussions that need to occur, pulling together, working with industry to get very specific information. There are certain areas that you would go into, invoking the transparency provisions where you are telling the government there are certain areas of evidence that we would like to have, evidence that we would like to look at. Those are underway right now. The decision on whether or not to actually take a case, I am not the expert. I am not the person who ultimately gets to make that decision and—

Mr. STEARNS. Oh, I appreciate that you are not the lawyer that would take it to the WTO, but I think you should be the person to say yes, there is enough evidence and yes, it is powerful enough



that the United States should take it to the WTO, because you could make that decision.

Mr. DUDAS. Actually, I am not the person that gets to make the decision on whether or not to take a case to the WTO—

Mr. STEARNS. No, I know—

Mr. DUDAS. [continuing] but—

Mr. STEARNS. [continuing] but you could recommend it to Secretary Gutierrez and say—

Mr. DUDAS. Well, certainly, we have discussions within trying to make these determinations, but I ultimately, certainly, defer to the United States trade representative.

Mr. STEARNS. So let me ask you pointblank yes or no. Do you think there is enough evidence to go to the WTO to complain about China stealing our intellectual property rights? Yes or no?

Mr. DUDAS. I can't give you a yes or no answer to that question because I am not the person that makes that decision.

Mr. STEARNS. You don't think there is enough evidence of them stealing our intellectual property rights?

Mr. DUDAS. I don't feel that there is a lack of evidence. What I am telling you is that is a decision that is being reviewed through a variety of agencies throughout the U.S. Government and one that—I know that if the U.S. ever takes a case, I know that that day that yes, there is enough evidence to take that case.

Mr. STEARNS. In the judicial interpretation that was issued in December your testimony states, "it took a step backwards regarding the enforcement against repeat offenders." Could you explain what that means and what should the penalties be?

Mr. DUDAS. Yes, sir, in those judicial interpretations there were a number of steps that we thought were forward steps. There were a few steps that we thought were backward steps, including eradicating the provision that allows for repeat offenders to have certain penalties. We are now working very closely with the Chinese on making certain that we understand fully what is in their judicial interpretation, and we are seeking clarifications.

Another area where there was express disappointment on behalf of my office in the U.S. Government, it looked as though sound recordings had been excluded from the judicial interpretation for criminal penalties. In discussions with the Chinese just 2 weeks ago it was made clear to us that that was not intention, that actually there is a way that they have been included. We are working very closely with them to make certain that if that is the case, we get a clarification.

The successes of the JCCT are along those lines where we are finding out we can have very express conversation where we discuss where we think there are deficiencies, where we think things need to be improved, and we are working closely with the agencies to make sure we get that clarification with them and in through the highest level of the government.

Mr. STEARNS. My last question is I think you stated that the Chinese government is giving free rein to counterfeiters by restricting market access to foreign companies. What restrictions do they impose and how are we working to open those markets if, indeed, that is occurring and it is giving free rein to these counterfeiters? Does that make sense? Do you know what I mean?

Mr. DUDAS. Yes. I think the philosophical argument, and it makes perfect sense and it is correct, that if a company does not have access to the markets, if an industry does not have access to markets in any country there is—

Mr. STEARNS. Underground market.

Mr. DUDAS. Right, they don't have—well, I mean, just the fact that if a legitimate company cannot get into the market because of other restrictions—

Mr. STEARNS. By the Chinese government.

Mr. DUDAS. [continuing] by the Chinese government in this case, then how will you ever be able to compete with counterfeiters? So an example, case in point—and I think Congresswoman Blackburn referred to it—in the motion picture situation, there are certain limits on how many motion pictures can be shown, foreign films can be shown in China. That was an agreed-to discussion under WTO negotiations. That number is 20. We believe that that number 20 is absolutely a floor not a ceiling. The Chinese have treated it as a ceiling. It is very difficult for a company to be able to—if they can't sell their product—if it takes 2 months to get their product out on the street, an illegitimate, a copy, a pirated version will be sold. The market is gone within a month. So if you can compete—I guess many industries are saying we will even try to compete with counterfeiters, but you have to give us the opportunity to compete with counterfeiters.

The business software folks that have issues in China are very concerned that there might be government procurement regulations that would favor the Chinese government that would somehow not allow foreign companies to come into those markets. If you put in barriers to markets in areas where 90 percent of the production is occurring in the United States, we are obviously most at risk.

Mr. STEARNS. I am just curious; you say that the Chinese government only allows 20 showings of a film? Is that what you said?

Mr. DUDAS. No, the rule is that there are only 20 foreign films that are allowed in—

Mr. STEARNS. Oh.

Mr. DUDAS. [continuing] to be shown in their movie theaters.

Mr. STEARNS. Okay, so 1.3 billion people, only 20 specific foreign films are allowed in—

Mr. DUDAS. For the movie—

Mr. STEARNS. [continuing] for the movie industry?

Mr. DUDAS. Yes.

Mr. STEARNS. And is there a floor on American films? That includes the American films I guess—

Mr. DUDAS. Oh, no—

Mr. STEARNS. [continuing] because we are foreign.

Mr. DUDAS. [continuing] it includes American films, yes.

Mr. STEARNS. So out of that that means you have got France and you have got India, you have got Italy, so you have got the entire European Union and not to mention the—

Mr. DUDAS. Right.

Mr. STEARNS. —Pacific Rim, so all these countries, only 20 films are allowed a year?

Mr. DUDAS. Get approximately 15 from the United States.

Mr. STEARNS. So 15. And I am just curious, how do they make that selection of those 15? Is it based upon politics?

Mr. DUDAS. There are certain censorship decisions, other decisions that they are making in China that go into that decision, yes.

Mr. STEARNS. Because you can see that there is a dearth of these movies, and so the people say by golly, I am going to find another way to counteract that. And, you know, that goes to the heart of what we are trying to do if we are trying to get China to be a free society and an open society and then you wouldn't have this huge restriction and the counterfeiters are actually making a lot better money because the Chinese government is restricting films. So my time has expired. The gentlelady from Tennessee.

Ms. BLACKBURN. Thank you, Mr. Chairman. You might wish you had never come over this afternoon when we finish with all of our questions, but, you know, it is a pretty important issue. And so let us go back to this prosecutions question. You know, we talked percentages; we talked about the 40,000 raids they say that they have conducted. Do you have a number? Can you say this is the total number? If you can't recite chapter and verse and where and what the offense was, are they giving you a total number rather than just saying we have had an increase?

Mr. DUDAS. An increase in prosecutions or in—

Ms. BLACKBURN. Correct—

Mr. DUDAS. [continuing] raids or—

Ms. BLACKBURN. [continuing] prosecutions.

Mr. DUDAS. The answer is yes, they will give us—they gave us a total number. I don't know what that total number was—

Ms. BLACKBURN. Would you get that to me—

Mr. DUDAS. I will—

Ms. BLACKBURN. [continuing] please?

Mr. DUDAS. [continuing] get you what they—

Ms. BLACKBURN. Okay.

Mr. DUDAS. [continuing] give us. If you wouldn't mind, I would say that it is not important in many ways what the total number is because it almost can't be enough—it can't be enough if we are not seeing legitimate products being sold in China. In other words, it can be anecdotal if you say I did 10,000 prosecutions or I did 20,000 prosecutions or 30,000 prosecutions, it won't be enough if there has still been a rise in—

Ms. BLACKBURN. I realize that and I agree with you on that.

Mr. DUDAS. Yes.

Ms. BLACKBURN. However, when you have had zero and you have got something, at least there is some tangible action—

Mr. DUDAS. Yes.

Ms. BLACKBURN. [continuing] that you can point to. Now, part of the problem with this entire situation is they have to come to the point that they value the product created from intellectual property, that they see that as something that is a revenue stream in their county. When you go into China, many times government is your partner on something. So they have to have a value for that. And you have talked about process, you have talked progress, you have talked about gathering evidence and being able to move forward, so let us talk about what you are tangibly doing. Are you all working with NGO's or other groups in addition to the WTO? Or

who are you working with on education? Are there NGO's that are out there helping us with not only China, but other of the Asian nations, other of the Central American nations to get laws on the books so that we have something that we can negotiate to, so that we have something that we can demand enforcement of?

Mr. DUDAS. Absolutely. Thank you for that question. First, let me say on the value of intellectual property within China, I can give you some good news. They have the largest trademark office in the entire world. The United States used to have the largest trademark office in the world—

Ms. BLACKBURN. Size means nothing—

Mr. DUDAS. But they—

Ms. BLACKBURN. [continuing] I mean we want to see—

Mr. DUDAS. Right.

Ms. BLACKBURN. [continuing] action.

Mr. DUDAS. But what you see is in the patent office, they have one of the largest patent offices in the world. Last year was the first year where there was more intellectual property produced in China than by foreign nations, which is very important for them to understand and need.

In answer to your question of what are we doing, the Administration has raised to the highest levels. President Bush asked last year to get Secretaries together of Commerce, the United States Trade Representative, Department of Homeland Security, and Department of Justice and go forward on this STOP Initiative, which is the strategy for targeting organized piracy. As part of that, there have been what are called world tours. There is one going on right now in the EU. There was one a few months ago where our deputy under secretary, Steve Pinkos, attended on behalf of the PTO going into different Asian nations, working with them, explaining to them what we are doing to crack down, what we are doing in customs, et cetera. My office has an enforcement division where literally hundreds of training programs go on a year. We will travel to China; we will travel to Russia; we have an institute where we are working with people here. We have trained Supreme Court Justices in India and other Asian nations. We have trained the prosecutors; we have trained judges; we have trained IP officials. We work very closely with IP officials—wherever we can get people who are likeminded within any nation on the value of intellectual property and getting that education throughout their country, we will work with them.

Ms. BLACKBURN. Let me ask you one more thing. You know, not only does this affect our entertainment folks in Tennessee, but we have a lot of pharmaceutical distributors, some manufacturing and biotech. Tool and die is a big industry, and tool and die has been hit tremendously. I have one constituent who lost \$500,000 worth of business this year because of China. And that always brings up the problems with liability. So, you know, I know that there are some products, you know, when you are talking about products with safety elements and the liability issue enters into that, whether it is a grommet or some small piece used in a car. And then you get that pirated in China, sold, counterfeit labeled, sold back into the American market. Should consumers be concerned? Have you

all raised this as a safety issue? And what action are you taking there?

Mr. DUDAS. Certainly, it is something that we are very concerned about as well. The issue of counterfeiting and piracy is not just an issue of money and economics; it is an issue of safety. If you have drugs that are being counterfeited, if you have products that are otherwise for safety, the UL listing has been counterfeited so that what you think you are getting is a safe—electrical cord that explodes. We definitely have been raising that. We do have a very strong customs department in the United States. So we are very good at our borders and protecting our borders in what comes in, but worldwide, the World Health Organization has estimated that up to 10 percent of pharmaceuticals are counterfeited. Of those, 67 percent of the wrong amounts in them, wrong amounts of—

Ms. BLACKBURN. Now, with all due respect, you know, if we have got two-thirds of the counterfeit product in this country—the counterfeit product that is being sold in this county coming from China, we have got a leak somewhere. Something is not exactly working. So I would just respectfully request that there be a review and a reconsideration of that process. Mr. Chairman, I yield back.

Mr. STEARNS. I thank the gentlelady. And I think we have completed our questions for you, Mr. Dudas. And I want to thank you very much for coming. I would conclude by advising you that you should tell your boss, Mr. Gutierrez, that when he goes to Beijing, if he wants to see the theft of intellectual property rights, all he has to do is go behind the American Embassy and there is a shopping venue where he doesn't get just 15 American films; he can get any American film he wants. So before he sits down to meet with the Chinese, just walk behind the American Embassy to the shopping venue. You can give him that tip, and that will give him a good idea of how to start his negotiations. With that, the subcommittee is adjourned.

[Whereupon, at 2:26 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

**Follow-up Q's and A's to USPTO Testimony before the House Energy and Commerce  
Subcommittee on Commerce, Trade and Consumer Protection**

**CUBIN**

**Question:** Does China's rebate of the value-added-tax on their domestic soda ash producers constitute an illegal trade subsidy?

**Answer:** According to the International Trade Administration's (ITA) Import Administration, China provides its soda ash producers with a partial rebate of the value-added tax (VAT) that they paid for inputs into products that they export. Our sources indicate that the rebate has recently declined from 86% to 76% of the VAT paid. China charges a 17 percent VAT on production of soda ash.

Under WTO rules, rebate or partial rebate of the actual VAT tax incidence upon export of a product is permitted as long as it is applied in a non-discriminatory fashion. VAT programs that are applied in a discriminatory manner are not necessarily prohibited. However, under certain circumstances, WTO rules allow for action to be taken against those programs. At the same time, the *excessive* rebate of VAT taxes, that is, refunding more tax upon export than was paid on inputs into the exported product, is an export subsidy and prohibited under WTO rules.

We do not yet have sufficiently detailed information about this VAT rebate program to determine whether it is applied in a WTO-inconsistent manner. Once we fully understand the implications of this program, we can determine the most appropriate action. For example, the United State Trade Representative, on behalf of the United States, recently initiated a WTO challenge of China's discriminatory VAT policy for its domestically produced semiconductors. In that situation, China provided a partial VAT rebate for domestically produced semiconductors, while charging the full VAT on imported semiconductors. After consultations with the Government of China, the Chinese agreed to remove the discriminatory VAT program.

We continue to vigorously research this issue and will work with Wyoming's soda ash producers to obtain more information about the VAT rebates with the goal of assessing whether they do violate WTO rules.

**Question:** Unlike Wyoming's soda ash producers, Chinese soda ash producers do not have to comply with stringent environmental regulations. Could this potentially be used as leverage in rectifying the imbalance caused by the tax on U.S. soda ash producers and commensurate tax rebate on China's domestic soda ash producers?

**Answer:** According to ITA's Import Administration, in and of itself, a difference in environmental standards or in other kinds of regulatory treatment between two

countries typically does not represent a subsidy under WTO rules. Unless China's environmental standards otherwise are inconsistent with its WTO obligations, it would be difficult to use them as a means to influence China to address the soda ash VAT rebates.

**Question:** **Does the Administration have any plans to address this unfair trade imbalance in future trade negotiations with China?**

**Answer:** **According to ITA,** the Department recognizes that subsidies may be a contributing factor to why Chinese exports are increasingly taking market share from U.S. producers. Both bilaterally and at the WTO, the Department, in concert with USTR, has been increasing pressure on China to improve the transparency of its subsidy practices and demonstrate that it has eliminated subsidies that are prohibited under WTO rules. Meanwhile, the Department is aggressively expanding its efforts and resources to collect and analyze information regarding Chinese subsidies. Subsidies to China's soda ash industry are one of our priorities; in fact, during the Fall 2004 meeting of the WTO Committee on Subsidies and Countervailing Measures the United States began pressuring China for details about potential subsidies to its soda ash producers. At the most recent JCCT in Beijing in July, China agreed to report all of its subsidies to the WTO by the end of 2005.

The Department will continue to press China to meet its WTO subsidy obligations through the mechanisms of the WTO, as well as in other multilateral and bilateral fora.

Follow-up Q's and A's to USPTO Testimony before the House Energy and Commerce  
Subcommittee on Commerce, Trade and Consumer Protection

SCHAKOWSKY

**Question 1:** Can you tell me what concrete improvements in Chinese workers' rights have been made in the last year? In particular, has there been any progress in reforming China's labor laws, which prohibit the formation of independent unions and the right to bargain collectively? Have any Chinese workers actually formed an independent union (that is, independent of the government and ruling Communist Party?)

**Answer:** We understand the importance of these questions; unfortunately, Commerce is not in a position to provide answers. The Secretary of State, who is the Administration's spokesperson on human rights issues, should be able to assist you. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

The contact at the State Department is:  
Susan O'Sullivan  
Bureau of Democracy, Human Rights and Labor  
(202) 647-4648  
OSullivanSX@state.gov

The contact at the Labor Department is:  
Martha Newton  
Acting Deputy UnderSecretary of Labor for International Labor Affairs  
(202) 693-4770  
Newton.Martha@dol.gov

**Question 2:** Aside from the visit by Secretary of Labor Elaine Chao to China last summer and a couple of non-binding letters of understanding that were signed at the time, what other actions has the Administration taken to ensure progress on the workers' rights, human rights, and democracy fronts in China?

**Answer:** As with question 1, this question should be directed to the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 3:** Given the slow progress last year, should the Administration reconsider accepting the AFL-CIO 301 petition if it were re-filed? Do you think this issue needs to be addressed with more urgency and a higher priority, or are you satisfied with the progress so far?



**Answer:** This question also should be directed to the Secretary of State as the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 4: International human and worker rights bodies, independent human rights groups, and international workers rights experts have found conclusively that China violates workers' freedom of association. First, and most obviously, China prohibits independent labor union organizing. This is unacceptable to the International Labor Organization. Is it acceptable to the U.S. Department of Commerce? If not acceptable, what is the Administration doing about it?**

**Answer:** As with the preceding questions, this question should be directed to the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 5: Is child labor a major problem in China?**

**Answer:** As with the preceding questions, this question should be directed to the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 6: In 2000, worker rights advocates affiliated with the Hong Kong Christian Industrial Committee (HKCIC) reported that a supplier from Mainland China that employed child labor produced McDonald's Happy Meal toys. Children as young as 14 years of age were paid a total of \$3 for each 16-hour workday. What has your agency done to investigate this allegation and to prevent similar incidences from occurring in the future.**

**Answer:** While we agree that this is a very important issue, it is not the role of the United States Patent and Trademark Office (USPTO) to investigate such allegations. This question should be directed to the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 7: Are these reports of domestic trafficking of women and children for forced labor a significant problem in China?**

**Answer:** As stated in the question above, this is a very important issue; however, this question should be directed to the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China

may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 8: How often does the United States visit and evaluate slave labor conditions in China? When was the last time your Department visited China to do an evaluation on labor conditions and what was found during that visit?**

**Answer:** It is not the role of the DOC to investigate such situations. For more information on these types of visits, please contact the Secretary of State, who is the Administration's spokesperson on human rights issues. Questions on the labor conditions in China may also be referred to the Secretary of Labor, who is the Administration's spokesperson on labor issues.

**Question 9: Please provide your best estimate as to how many U.S. jobs have been lost as a result of the dollar being tied to the yuan?**

**Answer:** Commerce does not have sufficient information to provide such an estimate. For more information you could contact the Secretary of the Treasury, who is the Administration's spokesperson on exchange rate issues.

The contact at the Treasury Department is:  
Sarah Lockart  
U.S. Department of Treasury  
Legislative Affairs Office  
Sarah.Lockart@do.treas.gov

**Question 10: Is it true that China's maintenance of an undervalued fixed exchange rate constitutes a prohibited export subsidy under the WTO Agreement on Subsidies and Countervailing Measures? Also, does it violate Article XV of the WTO General Agreement on Tariffs and Trade regarding currency manipulation and other WTO rules?**

**Answer:** According to ITA, an undervalued currency may result in some advantages to exporters, but it is not clear whether this constitutes an export subsidy under the Agreement on Subsidies and Countervailing Measures (SCM). While current WTO agreements and case law do not address directly such a link in the context of a unified exchange rate, which China maintains, the Department is nevertheless carefully considering this issue.

With regard to currency manipulation, the Department of Treasury has the lead on the Administration's efforts to encourage China's move towards a more flexible exchange rate regime.

**Question 11: Is it also true that China's undervalued exchange rate policy unjustifiably gives China an unfair competitive advantage over the United States and**

**discriminates against U.S. exports of goods and services contrary to the rules of the International Monetary Fund?**

**Answer:** We understand the importance of this question; however, Commerce is not in a position to provide an answer. The Secretary of the Treasury, who is the Administration's spokesperson on exchange rate issues, should be able to assist you.

**Question 12: If it is true that China's undervalued exchange rate is an unfair trade practice, has the U.S. Department of Commerce done anything to penalize China? If yes, what steps has the U.S. taken to either cease or curtail trade with China until the illegal trade practice is resolved?**

**Answer:** As noted above, the export subsidy aspect of an undervalued currency is not clear. Hence, while giving careful consideration to this issue, the Department continues to encourage the Chinese government to move towards a more flexible exchange rate regime.

**Question 13: The USTR March 30, 2005, *National Trade Estimate Report on Foreign Trade Barriers*, finds that China has been unsuccessful in ensuring effective IPR protection, as IPR enforcement remains highly problematic. The USTR finds that counterfeiting and piracy in China are at "epidemic levels" and "cause serious economic harm to U.S. business in virtually every sector of the economy" (p-95). How much has the U.S. economy suffered as a result of piracy and counterfeiting in China? What has the U.S. done to combat this epidemic?**

**Answer:** Secretary of Commerce Carlos Gutierrez is keenly aware of the significance of intellectual property rights (IPR) protection and enforcement for American businesses and innovators and has made combating piracy and counterfeiting a top priority for the entire Department. Regarding the first question, the USPTO does not compile its own statistics in this area. During the past year in particular, there have been several private efforts to quantify the impact of counterfeiting and piracy in China and on the U.S. economy, and we have an opportunity to review many such efforts, as well as other efforts in the past, and will continue to do so. Ultimately, we must keep in mind that our goal is to help American businesses and innovators protect and enforce their IPR in China and elsewhere, and that our efforts should be geared to providing greater market opportunities for legitimate companies doing business in China. To help us towards this goal, we have to rely primarily on our rights holders and what they tell us about their successful or unsuccessful strategies or approaches to combating the problems they face. I am, however, in a position to discuss the Administration's efforts to combat piracy and counterfeiting. As I testified, I serve as Under Secretary of Commerce for Intellectual Property and Director of the USPTO. In this capacity, I am dedicated to marshalling U.S. Government efforts to reduce the toll that IP theft has taken

on American intellectual property (IP) owners. I also co-chair the Joint Commission on Commerce and Trade (JCCT) IPR Working Group.

Senior Department of Commerce officials raise IPR-related issues with their foreign counterparts at every appropriate opportunity, seeking action in specific markets to enhance IPR protection and enforcement and to insist that trading partners abide by their international obligations to enforce IPR. Contacts include bilateral meetings here and abroad, letters, demarches and phone calls. These contacts are very useful in getting senior foreign officials to understand the depth of U.S. concern regarding specific IP violations and the state of IP protection in particular markets and to advocate for action.

DOC and USTR just completed meetings in Beijing as part of the 16th U.S-China JCCT session and received assurances that specific actions would be taken to reduce significantly the level of those activities. This year's JCCT is a step forward in strengthening market access for U.S. goods in China - particularly in the area of computer software - as well as improving the enforcement of IPR overall. However, we still have much more work to do before we are satisfied with progress in these and other areas. We will be closely monitoring these commitments and looking for real results and not just further promises.

In all of our engagements with China, our main message has been to urge the Chinese government to deter widespread infringements of IPR by imposing adequate and effective civil, criminal and administrative remedies. Senior Commerce officials, including from both the International Trade Administration (ITA) and the USPTO, have delivered this message to all the Chinese government agencies involved in IPR enforcement, from the Supreme People's Court and the Supreme People's Procuratorate (prosecutorial body), to Chinese Customs, the Ministry of Public Security and the enforcement authorities at China's IPR administrative agencies.

During his final trip to China in January 2005, former Secretary of Commerce Donald Evans met with Vice Premier Wu Yi and Minister of Commerce Bo Xilai and delivered a strong message to the Chinese that "Process is not progress. Results are progress." Secretary Gutierrez followed up on these points with Vice Premier Wu Yi and Minister of Commerce Bo Xilai during his first official trip to China on June 2-4, 2005.

To more intensively focus its efforts, the Department's International Trade Administration has consolidated its existing IPR policy and compliance staff and resources into an IPR Office. Experts in the new ITA IPR Office, the expanded ITA China Office, and USPTO work together to assist individual U.S. companies in developing successful strategies for protecting their IPR in China. Commerce and other agencies collaborate on a ACase Referral Mechanism@ for bringing cases to the attention of China=s Ministry of Commerce where U.S. companies have been unable to effectively enforce their IPR in China. Two cases have

already been submitted and others are forthcoming. In addition, regular consultations with industry groups are taking place at our Embassy and Consulates in China to develop industry-wide programs and enforcement efforts. The USPTO has made a number of efforts in China that have enhanced the protection of and enforcement of IPR and helped to combat piracy and counterfeiting, as described in more detail in my written testimony:

- *TRIPS review.* The USPTO takes an active role in the annual review of China's TRIPs commitments at the WTO, including primary responsibility for drafting many of the TRIPs-related questions.
- *USPTO "China Team."* We have established a team of D.C. based attorneys with detailed knowledge and background in all aspects of the Chinese IP system, including patents, trademarks, copyright and enforcement, and WTO/TRIPs. Our team of experts has developed good working relationships with their counterparts in China. We believe that continuing to develop good relationships on a staff level and providing the Chinese with the technical assistance that they seek and that we consider important, serves both the immediate and long-term interests of the US Government and US industry. In addition, for two summers, with the active support of U.S. Ambassador Clark Randt, we stationed one of our IP enforcement attorneys, who is fluent in Mandarin, in our embassy in Beijing to help with IP enforcement issues in the region. Last fall, the USPTO was proud to continue this support by detailing this individual as attaché to the U.S. Embassy in Beijing for a three-year appointment to continue our Government's efforts to combat piracy and counterfeiting. This is the first time the USPTO has sent an official abroad for an extended period of time to assist in improving IP protection in a specific country, which highlights the seriousness of IP violations in China. Having an attaché stationed in China has enhanced the USPTO's ability to work with Chinese Government officials to improve IP laws and enforcement procedures in addition to assisting U.S. businesses to better understand the challenges of protecting and enforcing their IPR in China.
- *Meetings with Chinese IP Officials.* One of the greatest challenges in China is ensuring that localities fully enforce national laws. To that end, the USPTO has held meetings with numerous local copyright, trademark, judicial, police, and prosecutorial enforcement officials throughout China to ensure that local officials fully understand their international obligations. Another important challenge is to work with our counterpart agencies, the State Intellectual Property Office (China's patent office) and the Chinese Trademark Office, both in Beijing, which are among the fastest growing IP offices in the world, to better administer the increasing number of patent and trademark applications each office is receiving. We meet with them regularly to discuss how we can help them with this growing challenge and will continue to do so. We have also hosted

numerous delegations of Chinese government officials, both at a local and federal level, at the USPTO, with the same objective of addressing these and other problems.

- *Training.* The USPTO has supported numerous recent efforts in China to train various Chinese government agencies on handling patent, trademark, and copyright cases, including criminal, civil and administrative and border cases. During my most recent trip to China to participate in the Ambassador's IPR Roundtable in Beijing this January, I met with our counterpart agencies and several IP enforcement agencies to unveil a comprehensive USPTO-China Work Plan of Technical Assistance and Cooperative Exchanges. We are in the process of implementing several of the programs of the work plan now, which includes specific initiatives in each of the substantive areas of IP including patents and data exclusivity, trademarks and geographical indications, copyrights and enforcement. In addition, we have also participated and supported several other recent training efforts in China, including training on criminal IP with the support of the British Government and China's Ministry of Public Security, training with the World Customs Organization on border measures and criminal IP, participation in Chinese sponsored programs on IP protection in Shanghai, participation on a training seminar to help U.S. rights holder file a criminal case in China, and many more.
- *Bilateral meetings with trade groups.* We have participated in a range of bilateral meetings, consultations, and conferences with visiting U.S. trade associations such as the Intellectual Property Owners, U.S. Information Technology Office, Research and Development Pharmaceutical Association of China, Quality Brands Protection Committee, American Bar Association, International Federation of Phonographic Industries, Motion Pictures Association, Entertainment Software Association, Business Software Association, and the U.S. Chamber of Commerce, to name a few. We have also worked with some of these organizations to host enforcement conferences in such major cities as Beijing, Shanghai, Guangzhou, Wuhan, Nanjing and Chengdu. In Beijing, we have provided briefings for visiting congressional and judicial delegations, and have provided training for State Department and Commerce Department officials at our various consulates.
- *Workshops about China.* USPTO has embarked on a series of "China Road shows", intensive China workshops and seminars in several cities throughout the U.S. in 2005-2006. The USPTO presented its first stand-alone "China Road Show" on June 14-15, 2005, in Detroit, Michigan. Over 120 people attended the event, which featured presentations on protecting and enforcing IPR in China by USPTO experts, a private practitioner in the Detroit area and representatives from China, including China's patent office and a private law firm in China specializing in IP.

The show was very well-received, with attendees continuing to attend the sessions throughout the entire 1 1/2 days. Two additional "road shows" are in the planning stages for 2005 and three or four are planned for 2006. These shows will follow the same format and largely the same topics as the template for the Detroit road show.

- Another activity, as part of our ongoing efforts to assist U.S. businesses and IP owners in protecting their rights overseas, includes a seminar on the Chinese criminal justice system for IP offenses that we held in February of this year. The seminar introduced the Chinese criminal justice system to U.S. industry, government agencies, IP owners, and legal practitioners and included information on the recently amended Judicial Interpretation so they may better understand the system and use this information to their full advantage to combat counterfeiting and piracy. We sponsored a follow up program in April of this year.

Our China team has supported a number of programs to advise our companies on how to file a criminal IPR case in China. These programs have already been held in Guangzhou, Beijing, and Hong Kong with an additional program planned for Shanghai. In addition, we provide support to our own law enforcement authorities where possible on IP criminal matters. For example, we have supported the Joint Liaison Group on criminal justice cooperation in its efforts to facilitate better criminal IPR cooperation, and joined in training programs run by a number of different government agencies on criminal IPR matters. Our China team works closely with the Customs Attaché and Legal Attaché at the U.S. embassy as well as the Bureau of International Narcotics and Law Enforcement at the State Department on these matters.

- *Delegations to China.* Commerce officials, including myself, have led missions to China and highlighted China's lack of IPR enforcement. For example, in 2003, then-Secretary of Commerce Donald Evans met with high-ranking Chinese officials and reiterated a continuing concern -- that effective IPR protection requires that criminal penalties for IP theft and fines are large enough to be a deterrent, rather than a business expense.

As a follow-up to the October 2003 trip, I led two delegations in 2004 for consultations with senior officials at China's patent, trademark, copyright, and other IP agencies. Our delegation also met with U.S. companies facing IP issues in China. The primary focus of these trips was to further the Administration's goals of improving the IP environment for U.S. companies doing business in China, and specifically of addressing widespread counterfeiting and piracy. We discussed several issues, including the need for improved criminal, civil, and administrative enforcement; the need for protecting copyrights over the Internet; and China's accession to the WIPO Internet Treaties.

In January 2005, I traveled to Beijing as part of a second Evans-led delegation. I was fortunate to be able to meet with Chinese Premier Wen Jiabao and Vice Premier Wu Yi to discuss concerns over China's enforcement of IPR of American businesses. Ambassador Randt also hosted the third roundtable on IPR, which was attended more than 250 government officials and business and industry representatives from the USPTO, the European Union, Japan, and China's IP agencies. In addition to providing the luncheon keynote address during the January roundtable, I announced the USPTO's new plans for IP technical assistance for Chinese IP-related agencies. I was pleased that the USPTO's offers of cooperative assistance were well received, and we are in the process of implementing these as well.

- *Supporting U.S. Businesses in China.* Commerce staff have participated in business sector outreach and education seminars nationwide conveying the message of the Strategy Targeting Organized Piracy (STOP!) Initiative and encouraging companies to leverage U.S. Government resources and secure and protect their IPR. These programs better enable companies to forcefully address the IPR challenges they experience in China and, when necessary, bring well-founded complaints to our attention. USPTO, ITA's China Office and ITA's Office of Intellectual Property Rights have participated in programs in such cities as: Cincinnati, Ohio; Grand Rapids and Pontiac, Michigan; Chicago, Illinois; Manchester, New Hampshire; Charlotte, North Carolina; Miami, Florida; Minneapolis, Minnesota; Wichita, Kansas; Austin and Dallas, Texas; St. Louis, Missouri; New York City and Long Island, New York; Waterbury, Connecticut; Boston, Massachusetts; Providence, Rhode Island; Portsmouth, New Hampshire; Fresno, Oakland, San Jose and San Francisco, California; and Washington, D.C. A major focus of these efforts has been to address problems of small and medium enterprises, although larger enterprises have also benefited from participation in many of these programs as well.

In addition, my testimony described the STOP! Initiative in some detail. As you know, the STOP! Initiative is the most comprehensive intergovernmental agency initiative ever advanced to smash the criminal networks that traffic in fakes, stop trade in pirated and counterfeit goods at America's borders, block bogus goods around the world, and help small businesses secure and enforce their rights in overseas markets. The STOP! Initiative is not exclusively focused on any one country, however, many aspects of the STOP! Initiative focus on China.

Under the STOP! Initiative, DOC created a single IPR hotline –1-866-999-HALT – that businesses can use to learn how to protect their IPR at home and overseas, or to file a complaint. This hotline rings directly at USPTO offices. When a caller calls on the hotline, she is connected to a USPTO attorney, often someone from



the USPTO China team, who is ready and willing to help with nearly any sort of IP related question. The bulk of calls on the hotline concern China.

In addition, DOC published an IPR Brochure "Protecting Your Intellectual Property at Home and Abroad," which provides information on the U.S. Government resources available to assist U.S. companies with IPR protection. DOC also launched a website, [www.StopFakes.gov](http://www.StopFakes.gov), which provides information on IPR registration, border enforcement, criminal IPR enforcement, and protecting and enforcing IPR overseas. The Departments of State and Commerce collaborated to create the *China IPR Toolkit*, which is available, along with other country-specific Toolkits, on [StopFakes.gov](http://StopFakes.gov). The toolkit provides detailed information on China's IPR regime and resources for protection. Additional country-specific toolkits are under development. USPTO has recently undertaken a public outreach campaign designed to heighten awareness in America's small business community of the importance of obtaining IP protection and ways in which they can protect their IPR overseas. While the public awareness campaign does not exclusively focus on any one country, many of the presentations have China, with at least one presentation entirely devoted to IP enforcement in China.

The USPTO launched this effort by holding the first of the series of free seminar on IP, piracy and counterfeiting in Salt Lake City, Utah in May 23 - 24, 2005. At this seminar, and in the ones to follow, lawyers and other professionals from the USPTO provided individual inventors, small and medium sized businesses, and artistic creators with specific details and useful tips about how to protect their IPR in the United States, and how to enforce them both domestically and internationally in whatever country they intend to market their product. Each program will be tailored to the particular needs of the city hosting the seminar so that topics of special interest to that city's business community can be addressed. Future programs, following the format established at Salt Lake City, are planned for Phoenix, Austin and Miami.

**Question 14:** The USTR March 30, 2005, *National Trade Estimate Report on Foreign Trade Barriers*, also finds that China's WTO implementation in the agricultural sector is "beset by uncertainty" and that, "Agricultural trade with China, however, remains among the least transparent and predictable of the world's major markets" (p. 73). The report continues: "Maintaining and improving China's adherence to WTO rules in the area of agriculture will require continue high-level attention in the months and years to come." What types of "high-level" attention has the U.S. devoted to monitoring China's agricultural trade practices? What more should the U.S. be doing?

**Answer:** Commerce understands the importance of this issue to you, but is not in a position to provide an answer. The Secretary of Agriculture, who is the Administration's spokesperson on agricultural trade issues, should be able to assist you.

The contact at the Department of Agriculture is:

Pat Sheikh  
Deputy Administrator  
International Trade Policy, Foreign Agricultural Service  
Tel: (202) 720-6887  
Pat.Sheikh@FAS.USDA.GOV

**Question 15:** It is estimated that the currency of China is undervalued by as much as 40 percent, which effectively creates a subsidy for China's exports and a prohibitive tax on U.S. exports. Many companies in my State of Illinois are struggling to survive under these unfair conditions. The U.S. House of Representatives is considering two pieces of legislation – H.R. 1216 (English) and H.R. 1498 (Ryan/Hunter) – that would allow companies to protect themselves through countervailing duties against Chinese subsidies, including its undervalued currency. How can the U.S. Department of Commerce help these companies compete against these unfair subsidies? Would you support those legislative proposals?

**Answer:** Any shift away from twenty years of trade practice of not applying the countervailing duty laws to non-market economies should be implemented only after careful consideration and review. As such, the Department currently takes no specific position on legislation, which proposes explicitly to apply the countervailing duty law to non-market economies.

