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PIRATING THE AMERICAN DREAM: INTELLECTUAL PROPERTY THEFT'S IMPACT ON AMERICA'S PLACE IN THE GLOBAL ECONOMY AND STRATEGIES FOR IMPROVING ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON
SECURITY AND INTERNATIONAL TRADE AND FINANCE

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

THE CONSEQUENCES OF COUNTERFEITING AND PIRACY AND STRATEGIES FOR SAFEGUARDING INTELLECTUAL PROPERTY RIGHTS INCLUDING CURRENT EFFORTS, AND NEWLY PROPOSED STRATEGIES

THURSDAY, APRIL 12, 2007

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THURSDAY, APRIL 12, 2007

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND INTERNATIONAL TRADE AND FINANCE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The subcommittee met at 2:06 p.m., in room SD–538, Dirksen Senate Office Building, Senator Evan Bayh (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN EVAN BAYH

Senator BAYH. I am pleased to call the meeting of this subcommittee to order, and I want to thank everyone for your attendance today. I know there are a lot of other important issues, and we will get right to our panelists after brief opening statements by members of the committee.

I would like to begin by thanking my colleagues for being with me here today. Senator Martinez, I look forward to working with you to have a vigorous agenda for our subcommittee, and I know that it will be a collegial undertaking because we worked well together in the past on many, many issues.

Sherrod, you and I have known each other since the days of our youth, being Secretaries of State together way back when, so it will be pleasure working with you on these issues as well, particularly since we come from neighboring states.

George, I am going to be introducing you in a moment. We consider your opinion to be so important, you are a panel of one. And you have had experience as a mayor, as a Governor, in addition to being in the U.S. Senate, so your perspective on these issues is greatly valued.

I am going to be introducing the members of the second panel when Senator Voinovich is done with his testimony.

Just a few brief words of my own. I would like to begin thanking two additional colleagues who are not with us today, that is Senator Leahy and Senator Specter, the Chairman and Ranking Member of the Judiciary Committee. This issue is one of those issues where there is overlapping interest between the two committees, and I want to express my personal appreciation to Senator Leahy

and Senator Specter for facilitating our hearing today. I know they are keenly interested in this topic, and will be taking it up in short order.

They currently have a very busy agenda on the Judiciary Committee with the Attorney General's testimony coming up here shortly, some of the resignations in the Justice Department. It is a full schedule for them, so I appreciate them letting us take the lead here today.

Obviously, legislation in this area will be addressed in the Judiciary Committee. Today, we are looking to flesh out the information necessary to allow legislation to move forward, so I want to thank the members of the Judiciary Committee for that.

This is a matter of significant urgency and importance for our country. Intellectual property theft is substantial and a growing problem, and while we have taken some good steps, particularly the STOP Initiative and the recently filed filing before the WTO, more needs to be done, if we are going to make a permanent dent in this problem.

The estimates are that U.S. businesses lose $250 billion annually because of intellectual property theft. These are resources that could be going to profits, to wages, to investment, and obviously in taxes to our government to meet the costs of Social Security, Medicare, and other pressing priorities. The estimates are that we have lost over 750,000 jobs in the United States because of intellectual property theft. Clearly, this is a significant hindrance to employment growth. Ten percent of all pharmaceuticals worldwide are estimated to be fake pharmaceuticals, with obvious health consequences potentially there.

I have seen articles that indicate that up to 90 percent of business software in China is pirated. Fifty percent of business software in India may be pirated, as well. Airline parts, auto parts, and a variety of other sectors in our economy suffer because of this, and obviously the recent WTO filing targeted music, films, and other parts of the entertainment industry.

The Administration has taken some important good first steps, as I just mentioned, but there are some inherent limitations to these steps, so we need to continue the progress. For example, the WTO filing is good, but it addresses only 4 percent of the problem, and the WTO process itself can take years to reach fruition.

We also need to make sure that this will be the beginning of a sustained effort. It has taken us some years to get to the point where we are finally taking some serious steps. I personally hope that these steps are not in an attempt to gather support for fast-track legislation or the Korea Trade Initiative, but, instead, to show a new embrace of vigorous efforts to crack down on intellectual property theft.

This is also important to our Nation's security. I will just touch upon this briefly. I serve on the Intelligence Committee and the Armed Services Committee. Along with Senator Martinez, we take up these issues on a regular basis. We seized an Al Qaeda manual—I think it was in Afghanistan—some time ago, which recommended the sale of counterfeit goods as a possible source of financing for that organization. There were $1.2 million of fake auto parts seized in Lebanon not long ago. The proceeds from those

sales were destined for Hezbollah. North Korea engages in illicit sales of faked goods. There were reports in U.S. News and World Report at the time of the first World Trade Center attack, that that attack could quite possibly have been financed by the sale of counterfeit goods.

So, if we are serious about our Nation's security, we also need to be serious about cutting off the funds for those who seek to harm us; all too frequently that involves the theft of intellectual property.

Finally, let me say that the support for the global trading system is at stake in this debate. This goes right to the heart of America's comparative advantage in the economy of tomorrow. If we invest in innovation, in educating our population, in investing in research and development to create new goods, new services, new cures, and that innovation is stolen from us because intellectual property theft takes place, the global economy will not work well. It is not a sustainable model, for when our trading partners have a comparative advantage, we buy from them; but when we have a comparative advantage, they steel from us. That just will not last.

So, I hope that it is possible to be for global trade, but also to be serious for enforcing the rules of global trade, particularly the protections of intellectual property. Our businesses, our workers, and our taxpayers have a right to expect our government to take vigorous action in the face of such a serious problem, and that is what has brought us here today.

Senator Martinez, I would be pleased to turn to you for your opening comments.

STATEMENT OF SENATOR MEL MARTINEZ

Senator MARTINEZ. Mr. Chairman, thank you very, very much, and I also want to let you know how much I am looking forward to working with you on this subcommittee and doing a lot of good work in the months ahead.

You have called this very timely hearing. It is a problem that obviously impacts American competitiveness, and it is, as you have highlighted in your remarks, something that all of us ought to be very rightly concerned. And while we have done some things, our government still needs to do much, much more.

It comes very timely for me because just last week I was visiting in California, and I had an opportunity to see folks in the entertainment industry, and it is staggering to hear the losses of their sustaining as a result of pirated goods; and not only in their medium, which cannot only be done by stamping out a CD or DVD, but also through the Internet, which is almost seamless and invisible. And the losses are, indeed, staggering and having the impact of costing American jobs.

So, whether on the issue of airline safety because of airplane parts or whether the medical goods that our folks are receiving are, in fact, what they think they are getting or what their prescriptions are calling for, it is an issue, as you indicated, of competitiveness, and also our edge in the global marketplace which oftentimes is defined by ingenuity and innovation. So, I think all of those lead to a multi-billion dollar industry that is, in fact, occurring under our very noses and one in which I think we need to do more.

Congress and the Administration have taken strong steps toward combating intellectual property theft, but we have not done enough. Since the 1990's, global trade in counterfeits has grown eight times and even faster than legitimate trade. We need to increase our resources for the departments to fight this problem, and look for ways that we can increase penalties for the counterfeits and pirates, and better coordinate with international IP protection organizations.

So, I am pleased to be joined here today by our distinguished panel of witnesses, and most of all I want to welcome our dear colleague, Senator Voinovich, and I look forward to hearing from you, sir.

So, thank you, Mr. Chairman, for this hearing, and I look forward to, as I said, working with you not only on this issue on the many others we will tackle in the coming months. Thank you.

Senator BAYH. Thank you, Senator Martinez.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Thank you for the work that you do on intellectual property. Senator Bayh and I sat in his office maybe a month ago talking about these issues, and I appreciate all of his contribution on this. And Senator Voinovich, both as Governor and as Ohio's senior Senator, has worked hard especially on manufacturing issues and what it means to our state and exports and all of that, so thank you, George, for that work.

In the earliest days of our Nation, we sent the marines to the shores of Tripoli to combat piracy against American goods. The Barbary pirates are long gone, but the losses we suffer today are just as real as those at the dawn of the 19th Century.

Since the early 1990's, trade in counterfeits has grown, it is believed, at eight times the rate of legitimate trade and now comprises up to 9 percent of world trade. The largest violators are China and Russia. According to the International Intellectual Property Alliance, in 2005, China copyright violations accounted for $2.6 billion. Russia violations accounted for $1.9 billion in U.S. trade losses. Further, IPR violations from Chinese firms alone cost American companies up to $24 billion a year in lost revenues.

Fake products compose 15 to 20 percent of all products made in China. Intellectual property rights have, frankly, been a foreign concept in the People's Republic of China. For decades, under communism, private property was banned; and for centuries before that, all ideas were owned by the state. Instead of innovation, the Chinese economic development strategy has largely relied on duplication. Just yesterday, The Washington Post reported on entire cities and towns being developed in China's major cities that strive to be full replicas of U.S. and European cities. Chinese motorists drive "Chery" cars that bear a striking similarity to Chevy cars to towns such as "Thames Town" outside of Shanghai. Reports suggest that U.S. auto parts producers, a lot of them in Indiana and Ohio and Pennsylvania, a key industry for much of our country, are losing up to $9 billion each year due to Chinese fakes.

So, how do we properly address this problem? In 1999, Congress sought to create a coordinated program within the Administration

to effectively counter the production and the importation of fake products. Unfortunately, the Administration has not held up its responsibilities in effectively enforcing IPR violations, as indicated by the ever-increasing volume of products that violate U.S. patents, copyrights, and trademarks over the past several years. The IPR Enforcement Act will work to stop the flood of fake imports into the U.S. through a comprehensive coordinated strategy in two important ways: First, the bill requires the Administration coordinate the efforts among the myriad of agencies engaged in stopping IPR violations under White House leadership. This legislation requires that agencies share the information and establish formal processes for cooperation and coordination at the state and local levels.

Second, the bill requires the Administration be held accountable by submitting to Congress a strategic plan that develops clear and comprehensive action by the Administration.

We no longer must combat a fleet of pirates off the north coast of Africa, but the economic damage from piracy is even greater today. We must show every bit as much resolve in protecting American interests, and this legislation is a good first step. I hope after this we will put forward the same dedication on dealing with currency issues, with protecting of workers, protecting of the environment, as we do of protecting intellectual property. All of them are very important.

I commend Senators Bayh and Voinovich for their leadership. Thanks.

Senator BAYH. Thank you, Senator Brown, for your interest in this issue, which I know is important for Ohio as well as Indiana and the rest of the country, and also for putting it in historical context for us. Very interesting.

Senator Casey.

STATEMENT OF SENATOR ROBERT P. CASEY

Senator CASEY. Senator Bayh, thank you very much, and thank you for your leadership; and Senator Martinez, Senator Brown, and, of course, Senator Voinovich, we would like to see our colleagues as witnesses once in a while. I had the opportunity just once this year to introduce Governor Randell in a transportation hearing, and I did not realize what it was like to be on the other side of that table here, so we are happy to see you here.

I do not need to reiterate some of the points that have already been made. This is a critically important problem for the world, but especially for the American economy. Obviously, I represent the Commonwealth of Pennsylvania, a tremendous job impact that this has in a very adverse way.

One statistic which may have already been cited but it bears repeating, just in terms of that one issue, that one concern about jobs, an estimated 750,000 American jobs are lost due to counterfeit merchandise, and that brief half a sentence tells it all. So, I think it is a critically important issue for our country, and I appreciate Senator Bayh making this an issue, as well as other members of this subcommittee as well the full committee; and, Senator Bayh, I wanted to thank you for that leadership, but I also want to make sure I am going to strongly support your bill. Is it 522?

Senator BAYH. That is correct. 522.

Senator CASEY. Thank you.

Senator BAYH. Thank you, Senator Casey. It has been my privilege now to work with two generations of the Casey family, and look forward to addressing this and many other pressing issues with you.

Senator Voinovich, thank you for your time. It has been a privilege to work with you for many, many years, and I think your presence here before this panel and our cooperation on this initiative shows this is not a partisan issue. Something the democrats and republicans can work well on together. I hope that we can work well with the Administration on this, as well. It is something that affects businesses, workers, and I salute your making this a priority, and I am grateful for your leadership, and we are looking forward to hearing from you today. Thank you.

STATEMENT OF GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Thank you, Senator Bayh, and members of the committee. I just could not help thinking about the number of times that I appeared before the Congress as mayor and Governor, and how frightened I was.

I want you to know that I welcome this hearing because we want to get this bill through Congress this session, and I appreciate the fact that Senator Leahy and Senator Specter have been helpful to us on it. It is very important that we get their support for this legislation. I think that it also does one other thing, and that is to bring to the public's attention the importance of this subject, and many of you have already spoken eloquently to the negative impact that our not enforcing intellectual property rights has had on our Nation.

I am proud that, as Governor, my administration gave high priority to manufacturing, and it grew during my time as Governor. And Senator Brown, that is one of the things that I was proud of: Fining manufacturing group. I worked with Ohio companies to conduct nine Ohio business trade and investment missions which were designed to open global markets for Ohio products. These trips span the globe and led to over 275 meetings between businesses and foreign government officials, and these trade missions resulted in tremendous success for Ohio business. Between 1991 and 1996, Ohio's export of manufacturing goods increased 46 percent; and, during that time, I am proud to say that it was big and small manufacturers that participated in that growth of export.

Since I arrived in the Senate, I have continued to fight for Ohio manufacturers. Unfortunately, I found that participation in the global economy has a dark underside: The theft of intellectual property and piracy of goods. After I arrived in the Senate, I began to hear from some of the same Ohio companies that joined the economic trade missions when I was Governor. These companies were facing a serious and growing theft: The theft of their intellectual property and competition from pirated products. As a matter of fact, one of the companies that I brought to China in 1995 did very well, got ripped off, and contacted me and said, "You know, what can you do to help me?"

As a result of these complaints, I held six oversight hearings about trade and intellectual property in the Homeland Security and Governmental Affairs Subcommittee on the Oversight of Government Management. Too often during these hearings I heard the same story: U.S. companies would sell their products overseas, often working with a local partner; and, soon after, the partner or some other IP thief would counterfeit and start to sell the very goods that the U.S. companies had worked to export. Most disturbing to me was the fact that when I first started to conduct hearings into this problem, the response from our own government was almost nonexistent. During this time, I continued to express my concerns to the Administration, first the Secretary of Commerce Evans and USTR Bob Zoellick, and more recently to my good friend Rob Portman when he was with the USTR, as well as Secretaries Coteras and Paulson.

My message was simple: Our government was not doing enough to address this problem, and it was failing to address companies that were subject to this theft.

I was not content just to voice my complaints. I voted against two separate free trade bills. And I am a free trader, but I voted against two free trade bills to get the Administration's attention to focus on the problem of intellectual property theft.

Finally, in 2004, President Bush established the Strategic Targeted Organized Piracy Initiative, the STOP Initiative. And while I thought that was a good first step, I also believed these efforts needed an orchestra leader, someone who wakes up in the morning and goes to bed late at night thinking about how to improve IP protection and enforcement. I was pleased that in July of 2005 the President appointed Chris Israel to serve as the first U.S. coordinator for intellectual property enforcement. While I believe these efforts started to pay dividends, they have, from what I understand from people in Ohio and around the country—and I commend the President for taking the initiative to improve the response—the next step is for Congress to enact legislation to improve on this work, make it permanent, and give Congress an appropriate oversight role.

What I am basically saying is, they worked real hard, they put something in place, and I think we ought to put it into the concrete and do it legislatively.

That is why during the 109th I partnered with the Chairman of this Subcommittee, who also recognized the devastation this problem is having on U.S. manufacturing, and we introduced the Intellectual Property Rights Enforcement Act. Because we did not get the legislation passed in the 109th, this past February we reintroduced it again. This legislation would improve our existing enforcement efforts: No. 1, providing better domestic enforcement coordination; two, strengthening international enforcement by reaching out to like-minded countries and improving coordination with these countries. We just cannot do this by ourselves. We need to have the same kind of reach-out that we have in intelligence in terms of intellectual property rights. And three, improving Congress oversight for requiring the development of a governmentwide IP strategic plan and annual reports to Congress on how these efforts are

faring; and, fourth, requiring the IP coordinator to work with IP stakeholders to develop resources to address their needs.

Just as important, this legislation keeps the next administration from reinventing the wheel in January 2009. In Washington, we all know we come up with new ideas, and just as all the pieces are put in place, we have a shift in power and we lose our momentum, and I do not want to lose the momentum we have gained on the STOP Initiative. Rather, I want to continue and improve on it. Our democratic system is another thing that a lot of our competitors do not have to worry about, and that is something we fail to realize. Now, you wonder sometimes, are we really organized today in the Senate, House, the Administration, to deal with this global competition that we are experiencing? Countries like China, sadly, do not have congressional elections every 2 years and Presidential elections every 4 years. They do not have to worry with losing their momentum because, when the regime comes to power, it stays in power. Stays in power.

Well, I was disappointed we were not able to get this passed in the 109th. Senator Bayh and I continued to work with business, industry groups, and labor groups to enact it. I have also, as I mentioned, spoken to Senator Leahy and Senator Specter, and I understand that the Judiciary Committee will hold hearings on a number of IP items, including this legislation. I look forward to working with the members of the Judiciary Committee on this legislation, and I appreciate the willingness of the Chair and Ranking Member to examine this important issue. I would note that since we reintroduced this legislation, over 30 organizations have endorsed it, including the U.S. Chamber of Commerce, the AFL–CIO, National Association of Manufacturers, and United Auto Workers.

Now, let me just say this: With the kind of support we have here in this room, there is not any reason why we cannot get this done on a bipartisan basis in this Congress. It is long overdue. The last bastion that we may have to be competitive in that global market place is our new ideas; and if they could steal our ideas, then we are in very big trouble.

So, I think this is important to our national security, I think it is important to our global competitiveness, and I really appreciate the fact that you have given me a chance to share my thoughts with you this afternoon. Thank you.

Senator BAYH. Senator, thank you for your long-standing devotion to this issue and for really being one of the moving factors behind the creation of the STOP Initiative. As I understand it—I will ask my colleagues if there are any questions, but as I understand your testimony, you think this needs to be a major national priority, you think that it needs to be coordinated across the branches of government, you think it needs to be a global response, and it must be permanent?

Senator VOINOVICH. Yes, I do, absolutely, and I am hopeful that the Administration understands how important it is to our country. I mean, they have done a halfway decent job on this, and now they have a chance to make it permanent and move forward.

And again, I hope the folks that are sitting behind me will make it very clear to the Administration how important it is to their respective organizations that this gets done now.

Senator BAYH. Well, I agree.

Are there questions? Senator Martinez.

Senator MARTINEZ. Senator, I was going to ask you, I know that permanence is one of the issues, but is there a different enforcement mechanism that the STOP Act would do different from what is being done now, or is it mostly the fact that it would be established and permanent?

Senator VOINOVICH. There are two things—the STOP Act does not have the international dimension, even though Chris Israel is traveling around, it does not. He is kind of doing it on his own. But there is nothing in the legislation that says we ought to be reaching out with other countries in the area of IPR enforcement.

Second, this legislation provides that, in the Office of Budget and Management, you have got somebody there that is going to look over how this is all working out, because the problem today with Chris is that he is, like, the coordinator of some lower-level people. And I mentioned this morning to OMB Director Portman, that you need somebody at OMB to sort of be there, and someone says, "You know, this is not working," and agencies know that somebody that is over them can stay on them. It is very much like what I did. I had regional representatives when I was Governor, and they were supposed to get stuff done out in the state, and all of the agencies of state government were supposed to cooperate with them. Well, what I did was I had those regional reps send me a weekly report, so every week I read what was going on. The agency directors knew I was reading those reports, and they knew that if they were not cooperating they would hear from me, and I think that is the kind of oversight that we need if we are going to get serious about this enforcement.

Senator MARTINEZ. That is all, thank you.

Senator BAYH. One of our witnesses on the next panel from the GAO will explain how the STOP Initiative has been good, but from an ongoing perspective there are improvements in the structure that could make it more either more effective in terms of setting goals and identifying resources necessary for achieving them and holding people accountable for following through.

You were sounding more like a former executive, George. It was refreshing to hear.

Senator Casey.

Senator CASEY. Two quick comments.

Senator, thank you for your testimony, and especially the sense of urgency that you bring to this issue. That is always a challenge, it seems, in Washington, and I appreciate the intensity of your focus on this in the long years of work you put into it.

And second, for mentioning my Pennsylvania colleague, Senator Specter, in his work on Judiciary, along with Senator Leahy and others, as part of this team effort to get this job done, but thank you again.

Senator VOINOVICH. Thank you.

Senator BAYH. I would like to ask the members of the second panel to please come forward and take your seats.

While you are doing so, let me say that I would be remiss if I also did not thank our colleague, Senator Dodd, the Chairman of the full Banking Committee, for facilitating the hearing today. I am

very grateful for his leadership. He cares deeply about this issue, and I want to publicly express my gratitude to Senator Dodd.

Gentlemen, thank you very much. I am going to ask for your help. If I get the pronunciations of any name slightly wrong, do not hesitate to correct me.

What we would like to do, if it is appropriate, after the introductions—Moisés, I think we will begin with you and then go to Dr. Yager and then Brad Huther, and then finally Tim Demarais, if that order is appropriate.

Your full statements will be submitted for the record. If we could try to keep it close to 5 minutes, that will be ideal; of course, members of the committee will try to do the same. But if you run a little bit over it, that will be OK. If you keep it in the ballpark, that would be good.

Our first panelist today, Moisés Naím—did I get that correct?

Mr. NAÍM. Yes.

Senator BAYH [continuing]. Is the editor and publisher of Foreign Policy magazine, a leading publication on international politics and economics. He has written extensively on the political economy of international trade and investment, multinational organizations, economic reforms, and globalization. He is the author and editor of several books and has written numerous essays and articles. His regular opinion columns appear in The Financial Times and are also carried by many of the world's leading newspapers. Naím is one of the six members of Time magazine's international board of economists. Moisés, thank you for joining us today.

I will make the other introductions, and we will begin with the statements.

Also with us today is Dr. Loren Yager. Dr. Yager is currently serving as Director of the International Affairs and Trade Team of the U.S. Government Accounting Office (GAO), where he is responsible for international trade and related issues. Dr. Yager has recently completed reports and congressional testimony on topics including China import remedies, global corporate/social responsibility, global intellectual property protection, offshoring of U.S. services, terrorist financing, the World Trade Organization, Conflict Diamonds, China's WTO compliance, the Maquiladora industry, container security, and a variety of other subjects—you have been a busy man, Dr. Yager—particularly in the subject that gathers us here today. I want to thank you and your staff for your very thoughtful work. It was very analytical and very detailed, so I am grateful for your sharing the thoughts that you and your staff have here with us today.

Also with us is Mr. Brad Huther. Thank you for joining us today. Mr. Huther coordinates the U.S. Chamber of Commerce's Intellectual Property Enforcement Program. The Chamber is a business federation representing 3 million companies, associations, state and local Chambers and American Chambers of Commerce abroad. Mr. Huther joined the Chamber in January 2005 to advance its fight against counterfeiting and piracy. His commitment to strengthening intellectual property systems worldwide is evident through his work as President and CEO of the International Intellectual Property Institute, Special Attach' at the World Intellectual Property Organization in Geneva, and Associate Commissioner of the

U.S. Patent and Trademark Office. Mr. Huther, I would like to thank you and the Chamber for your presence today.

Just as Senator Voinovich's presence and Senator Martinez's presence demonstrates that this is a bipartisan undertaking. The Chamber's interest in this, along with the AFL-CIO, the United Auto Workers and others shows that this can unite management as well as labor, and I would particularly like to thank you for your cooperative approach toward complementing those steps that have been taken thus far, but also looking to how we could improve and buildupon what has been done. So, I want to thank you for the spirit you have brought to this dialog.

Last, but by no means least, we have Timothy Demarais, Vice President of ABRO Industries, Inc. It is good to have a fellow hoosier with us here, adding some additional midwest common sense to the dialog this morning, and also to help us put a human face on this problem. Tim has spent 33 years with ABRO Industries. Based in South Bend, Indiana, ABRO sells adhesives and other products. As Vice President of International Sales and Marketing, Mr. Demarais developed the ABRO brand concept which has spearheaded company growth from $4 million in sales in 1974 to a projected $100 million in 2007. Mr. Demarais has made more than 100 overseas business trips since joining the firm, doing business in over 150 countries. He helped ABRO achieve the President's "E" Award in 1991 and the President's "E" Star Award in 2005. He was featured with ABRO's company President in the Wall Street Journal for a 2004 cover story on combating counterfeiting in China. Demarais personally led raids on foreign firms that were illegally importing fake ABRO products, resulting in the seizure and destruction of thousands of cartons of counterfeit merchandise. He received his BBA in marketing from the University of Notre Dame. During his junior year, he studied international business at Sophia University Tokyo. Tim, we look forward to hearing from you again today.

Dr. Naím, let us begin with you.

STATEMENT OF MOISÉS NAÍM, EDITOR IN CHIEF, FOREIGN POLICY MAGAZINE

Mr. NAÍM. Thank you, Mr. Chairman, for giving me the opportunity to be before you today. Before entering into the details of my presentation of my testimony, I want to recognize you and your leadership, Mr. Chairman, in battling the problems created by the booming global trade in counterfeits as well as your sincere interest in seeking innovative solutions to contain this growing threat, having followed your efforts and those of Senator Voinovich and other members of the committee for years in trying to untangle or understand and find innovative and interesting ways of dealing with this.

Today, I will make five brief points concerning the international trade in stolen intellectual property, and I will conclude the remarks with a proposal for your consideration.

First, the international trade in counterfeited goods is just one of many illicit trades that has recently boomed. It is very important to understand that the trade in counterfeits is just one segment of a booming black economy that, thanks to globalization and some

other changes that took place in the nineties, have acquired unprecedented scope and consequences for the global economy, and it is undermining institutions and politics everywhere in the world.

The illegal international trade in people, narcotics, timber, industrial waste, human organs, weapons of mass destruction, and myriad other goods is booming, as I said, and there are many interesting similarities among all these traits. Smuggling luxury products from Asia to Europe may look very different than smuggling cocaine from the Andes to Florida or illegal workers to Spain or small arms to Africa.

Yet, the economic forces, organizational arrangements, and business models driving these trades, as well as the behavior of the players involved, are strikingly similar. They are not the same people or the same criminal networks, but the forces that drive them and the way they are organized and operate, they are much in common. Government responses have also been quite similar, and unfortunately in all cases their success has proven very elusive. There is hardly any country that can claim major progress in containing the growth of any of these illicit trades. Therefore, a major implication of this first point is that there is much that can be learned from past and current efforts aimed at curbing illicit traffic, trafficking in other markets and products.

In some cases, these traffics are connected. The vendor that sells you a fake luxury bag in the streets in Manhattan or a few blocks from here is often as illicit as the bag itself. The network that traffics in counterfeits are connected to the networks of trafficking in illegal workers, and those in turn are connected to the networks that specialize in money laundering.

My second point is that a common mistake that I have found in legislation aimed at controlling illicit trades everywhere is that too often it assumes that governments are more capable and effective than what has proven to be the case. There are many reasons for this performance gap, but the most important is that governments are very constrained when they have to operate outside their national jurisdiction. The natural habitat of a government is inside a nation's borders; instead, the national habitat of traffickers is in between national borders.

While traffickers are perfectly at home when operating illegally across borders, governments are slowed down, indeed often paralyzed when having to operate internationally. This means that in order to be effective in battling international smuggling rings, government needs to be selective in what it tries to achieve. It is unrealistic to expect government to combat every aspect of counterfeiting. Therefore, selectivity and modesty in the choice of goals assigned to government agencies should be a crucial test of any legislation in this area.

The third point is that another frequent characteristic of antitrafficking campaigns worldwide is that they all tend to concentrate more on constraining the supply of the smuggled goods that are limiting their demands. This fact is well-known in the case on the War on Drugs in the United States or what happens with illegal workers.

It is important to remember that the boom in pirated goods owes as much to a growing demand as it does to growing supply, where

talking literally about billions of consumers around the world who are willing—indeed, eager—to bogus facsimiles of products at a fraction of the price of the original lawful goods. This market of consumers is served by millions of some of the most innovative, ruthless, and managerially and technologically sophisticated entrepreneurs at work today in the global economy.

This is a powerful market and is driven more by high profits than by low morals, by demand as well as by supply. Thus, approaching this fight purely from a law enforcement or legalistic perspective aimed at curbing the supply will miss the fact that we are in the presence of a gigantic market with millions of buyers and sellers and immense volumes of merchandise and money changing hands.

My fourth point is simple and brief, and you have already noted, and it is in the legislation, and that is that no country can successfully tackle this problem acting alone. A global problem cannot be solved with unilateral national efforts containing the growth of the global counterfeiting market inevitably requires the effective coordination of several nations acting in concert.

My final point is that patents, copyrights, trademarks and other legal instruments are increasingly failing to protect the rights of owners of intellectual property. Brands, designs, formal software and content with commercial value are being routinely stolen, copied, and sold worldwide at a fraction of the price charged by the original owners. Entire industries have been devastated by piracy.

It is apparent that the ability of governments to enforce intellectual property rights is rapidly declining. The governments are not being able to stop this. Moreover, there are good reasons to assume this decline cannot be stopped, reversed, or even slowed down in the short term. The implication of this point is not that governments have to abandon the fight to ensure intellectual property rights are protected and enforced at home and abroad, but other governments should not be held accountable for their complacency and often their complicity with the counterfeiting industry.

Rather, the implication is that governments need to be supported in their efforts to combat this illicit trade by the most intensive use possible of anticopying technologies. There is much that technology can do and is already doing to safeguard products from illegal copy. I, therefore, believe that it is very promising market-based solution is to include in any legislation mechanisms that will stimulate and accelerate the development and adoption of new technology by the business sector. These technologies will make counterfeiting products far more difficult than what they are now to copy.

I am convinced that, in the foreseeable future, technology, not patents, sanctions or other traditional means for fighting intellectual property theft will become critical in protecting the intellectual property of innovators, creators, and artists.

Thank you again, Mr. Chairman and members of the subcommittee, for affording me this opportunity to testify before you.

Senator BAYH. Thank you, Dr. Naím.

Dr. Yager.

STATEMENT OF LOREN YAGER, DIRECTOR OF INTERNATIONAL AFFAIRS AND TRADE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. YAGER. Mr. Chairman, Ranking Member Martinez, thank you for the opportunity to appear before this subcommittee to discuss our work on U.S. efforts to protect U.S. intellectual property rights. We appreciate the opportunity to contribute to the congressional oversight of IP protection both in this hearing as well as in another report on the subject for Senator Voinovich that will be released shortly.

IP protection and enforcement cut across a wide range of U.S. agencies and functions, making coordination among all parties essential and creating an important oversight role for the Congress. In my statement today, I will address two topics on IP enforcement: First, the effectiveness of the current coordinating structure to guide and manage U.S. Government efforts; and second, the extent to which current efforts incorporate important features of an effective national strategy.

Mr. Chairman, my statement today will also include some observations on how the Bayh-Voinovich legislation addresses key weaknesses that we have identified in our work on IP enforcement. To address these issue, I have drawn on a number of completed GAO studies, and these studies are identified in my written statement.

Mr. Chairman, to discuss the current interagency coordination structure on IP, you have to understand two key components. The first component is what is called "NIPLECC," the National Intellectual Property Law Enforcement Coordination Council. Created by the Congress in 1999 to serve as the central coordinating structure for IP enforcement across Federal agencies, NIPLECC has struggled to define its purpose, retains an image of inactivity within the private sector, and continues to have leadership problems, despite enhancements made by Congress in December 2004 to strengthen its role.

The second component is the 2004 Presidential initiative called "STOP," the Strategy to Target Organized Piracy, which is led by the National Security Council. Many agency officials said that STOP has increased attention to IP issues within their agency in the private sector as well as abroad, and attribute that to the fact that STOP came out of the White House, thereby lending it more authority and influence.

To summarize our key findings, we raised two questions about this combination of NIPLECC and STOP to ensure IP protection, and I could term these two as accountability and long-term viability. Both of these issues were mentioned in the opening statements as well as in Senator Voinovich's statement.

In terms of accountability, we found that STOP's potential is limited because it does not fully address valuable characteristics of an effective national strategy. For example, its performance measures lack baselines and targets to assess how well the activities are being implemented. In addition, the strategy lacks a risk-management framework in a discussion of current or future costs, important elements to effectively balance the threats from counterfeit products with the resources available.

Although STOP identifies organizational roles and responsibilities with respect to individual agency's STOP activities, it does not specify who will provide oversight and accountability among the agencies who are carrying out the strategy. This lack-of-accountability features limit the strategy's usefulness as a management tool for effective oversight by Congress as well as accountability to the private sector and to consumers who STOP aims to protect.

In terms of long-term viability, we point out that STOP has no permanence as a Presidential initiative and, therefore, no guarantee that it will exist after the end of this Administration. While the most recent annual report describes many STOP activities, it does not explain how NIPLECC principals plan to carry out the responsibilities mandated by the Congress. From the beginning of NIPLECC, Congress's goal has been to institutionalize law enforcement coordination, and our work suggests that this goal has not yet been met.

In GAO's recent report on this subject, we included recommendations to address these issues of accountability and long-term viability. Our discussions with the IP coordinator, in preparation for this testimony, indicated that NIPLECC has taken some steps to address GAO's recommendations, such as working with OMB to understand government priorities and resources related to IP enforcement.

Mr. Chairman, I would note that the Bayh-Voinovich legislation proposes more fundamental changes to the current coordinating structure. For example, by creating IPEN, it eliminates the need for NIPLECC and resolves the lack of permanence that is of concern with the STOP Initiative. In addition, the legislation requires the new coordinating structure to prepare a plan that addresses key elements of an effective strategy, building in mechanisms for accountability, oversight, and strengthening leadership. These changes are consistent with the key findings of our report.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you have.

Senator BAYH. Dr. Yager, thank you very, very much.

Mr. Huther.

STATEMENT OF BRAD HUTHER, SENIOR ADVISOR FOR INTELLECTUAL PROPERTY ENFORCEMENT, U.S. CHAMBER OF COMMERCE

Mr. HUTHER. Thank you very much, Mr. Chairman. I am sorry Senator Martinez left the room, but I wanted to commend him as well as you——

Senator BAYH. Nothing personal, Mr. Huther. He said he will be back in a couple of minutes.

Mr. HUTHER. Well, maybe I will say it twice, then, but he has been working on the Chamber on this issue since the Chamber decided to begin working on this issue, and we are especially grateful for his support and your leadership in bringing us to where we are today.

In Washington, the phrase "public-private partnership" is used a lot, and yet I think if there is a good example of a public-private partnership, it could very well be the combination of what the business community is doing through a coalition against counterfeiting

and piracy that now numbers almost 300 trade associations and companies, whose commitment is to do one thing, and that is to work toward the development of solutions that can be transferred to companies everywhere, not just those of the Chamber or not just those of the associations and companies that are present in our program, because we think it is critical—it has been brought out earlier—that without the leveraged efforts of anyone and everyone who is involved in this problem, both directly and indirectly, including consumers, who sometimes are not associated with the problem, this problem is not going to go away.

The features that you have included in your proposed legislation, we think, builds upon the solid foundation that others have already addressed. The work of the Administration, together with the work of the business coalition that the Chamber now represents shows good progress, but if we were to stay the course, doing what we are now doing, we believe we would not be able to effectively deliver the kind of global solution that is really necessary.

So, your approach in terms of engaging and elevating the importance of this public policy issue, and including the involvement of stakeholders and foreign governments and the law enforcement community without impinging on their current authorities to continue to do what they have been doing before and to make decisions as they are authorized to make them, we think, is the right overall strategy to engage in.

The Chamber, in its coalition, is working on facets of this program that have been addressed, including the technology issue, how we can deal with Internet problems, where a lot of the trade and illicit goods is occurring, to transferring knowledge to many of our small and medium enterprises that lack the resources first to even protect their supply chain, if they know they have got a problem with it; or, second, to protect their intellectual property rights, if they file for patent or trademark or copyright protection in foreign locations. It is an expensive undertaking, and no one is capable of doing this alone.

So, therefore, the framework that you are establishing, in my opinion, and in the Chamber's opinion, is building on the best premise: Let's keep the best parts of what we have learned through STOP, let's continue to engage the business community because we are not only knocking on government's door or asking for things to be done. We are pledging our resources and our expertise and our talent to add to that of the government. And maybe at some point in time when we engage other partners, as the Administration has already begun to do, the E.U.-U.S. framework has promise for doing some very important work in that region. The Security and Prosperity Partnership Agreement in North America, while lacking in E.U. and U.S. collaboration, I think, has the chance to do the very same thing in our part of the world. APAC and other organizations like them are doing them together.

So, your IPEN framework starts connecting all the stars in the constellation at a time when I think those stars are properly aligned to do and leverage the work that needs to be done on a much grander scale than we have been able to justify to date.

I will close by indicating that I had the privilege of testifying before then Chairman Voinovich's subcommittee on the issues of

STOP and on the issues of NIPLECC. I said then, and I say now: I think they do very good work. I know they are because they come to the Chamber on average once a month to tell us what kind of progress they are making.

If I had one criticism, which your bill address, I said then that I thought that if the Government Performance and Results Act Framework were invoked in this area, it would become a lot clearer for industry to understand where the government is going, enable us to understand how we might redirect some of our activities and resources so as to support a national strategy to deal with this, and linking that national strategy to an international one.

So, again, Mr. Chairman, we thank you for your leadership on this issue. It is clear the Chamber supports the enactment of this legislation. More importantly, I think I could tell you that the Chamber, together with its working coalition, stands ready to help and contribute to the successful implementation of what we think is one of the most important public strategies that the Congress can undertake in the current session. So, thank you.

Senator BAYH. Thank you very much. We are in favor of what works, and building upon past successes and collaborating going forward to improve the effectiveness of this effort, and you and your organization have been very instrumental on that, so once again I want to thank you for your contribution, both past and future.

Mr. Demarais, our representative from the real world. We are looking forward to hearing from you.

STATEMENT OF TIM DEMARAIS, VICE PRESIDENT, ABRO INDUSTRIES

Mr. DEMARAIS. Thank you, Mr. Chairman, for giving me the opportunity to testify regarding one of America's most contentious foreign trade issues: The theft of intellectual property worldwide. I spent my entire career—33 years—working overseas combating legitimate competition. Just the last few years I realize there is something else out there that is not equal playing field, and hopefully today we try to balance that playing field.

I feel ABRO is one of the most unique, one of the most innovative trading companies in the United States. We are known as the buccaneers of the trading world from what we have done in the past. We initially concentrated on selling ABRO products in Third World markets, and there is no place we would not travel to introduce our ABRO brand. We visited and did business in diverse markets such as Nigeria, Congo, Pakistan, Lebanon, Saudi Arabia, Sierra Leone—just to name a few of the diverse markets. We now sell our ABRO products in over 150 countries.

In time, our ABRO automotive products became the brand of choice in many global markets, but unfortunately today the ABRO name has also become the brand of choice to counterfeit by unscrupulous manufacturers worldwide. We recognized early that our trademark was one of our most important assets, and over the past 28 years we have registered the ABRO trademark in 167 countries. So, we were doing our job. We had spent hundreds of thousands of dollars registering our trademark, and ironically we have spent

an equal amount in defending our trademark worldwide against importers of counterfeit ABRO products.

Although we could point to many examples of counterfeiters overseas, one foreign company that has taken intellectual property violation to a new level is Hunan Magic Company in Hunan, China. We did not know we had this problem until 2001, when I received an E-mail from our ABRO distributor, requesting that he would like to buy the ABRO products from our Chinese subsidiary. I knew we did not have a Chinese subsidiary, and went to the Canton Trade Fair later that year and was absolutely shocked to see Hunan's Magic booth, which had a full display of all of our ABRO products, and the company was actively selling ABRO products to many overseas customers, including my own.

The company had literally stolen our corporate identity, stating they owned the ABRO name, which, of course, is not true. I immediately contacted the show officials and advised them that this company was illegally selling ABRO products. The officials agreed to raid the booth, and I was stunned when the general manager of the Chinese company produced documentation that showed they had the rights to the trademark in China. It actually was in a trademark registration. It was an application, but to them they took it as the official trademark.

There was obviously uncertainty at this point, until I picked up a sample of our ABRO Epoxy that Hunan Magic was displaying in their booth and selling to my customers. Our ABRO Epoxy is a product that I personally developed 20 years ago. At that time, we were not doing a hundred million dollars. We were somewhat of a low-budget operation. I had taken a picture of my wife applying epoxy to our bicycle in our house and put this photo on a blister card similar to this. This product has become one of our most popular selling ABRO products with millions of units being sold annually.

I immediately asked the general manager of Hunan Magic who is this lady on the ABRO Epoxy card? He told the show officials it was some western model.

I reached into my wallet, pulled out on a picture of my wife which finally convinced the show authorities we actually own the trademark, and they closed down the booth, and Hunan Magic was cited for using the ABRO trademark illegally.

We thought the matter was settled and we were very happy, until the next trade show, when Hunan Magic changed the packaging slightly by deleting the face of my wife and replacing it with the face of an Asian woman but keeping everything else the same, including the ABRO name. As you could see, they are identical.

This story was a subject of a cover feature in the Wall Street Journal, and we thought the notoriety would convince the Chinese Government to do something by controlling this renegade Chinese manufacture. Unfortunately, their illegal activity has become more blatant, as Hunan Magic is now selling ABRO products in all our major markets, and the general manager has publicly stated that his ABRO brand is one of the most successful brands they have ever introduced. That is why we are thrilled that a new act is being introduced in the Senate by Senator Voinovich and, of course, yourself. We all know about the War on Terror that is being fought

globally, but in the business community we look at intellectual property violations as a War on Economic Terrorism.

As these companies who are counterfeiting are stealing patents, trademarks, ideas, and designs from American companies. It was encouraging to note that recently the U.S. Government announced that would it ask the World Trade Organization to organize meetings to address deficiencies in China's protection of the intellectual property rights on books, music, videos, and movies. However, there was no mention of many other U.S. products that are being counterfeited, including automotive parts and accessories. We only hope that the U.S. Government will address these deficiencies in all areas of intellectual property violations.

The past 5 years have been most frustrating as ABRO's biggest competitor is not STP, General Electric, or some other well-known automotive chemical manufacturer. Our biggest competitor has become ABRO products from China, which is clearly not how our American dream to ABROnize the world was expected to play out. We ask that the U.S. Government treat intellectual property matter more seriously and pass legislation that will correct these trade injustices and then provide agencies overseas the effective muscle to enforce the new trade legislation.

Thank you for giving me the opportunity to testify today and allow me to vent some of my personal past frustrations on this matter. We continue to fight the battle in the overseas sales trenches every day, but we do need some help from the generals back here in Washington. The War on Economic Terrorism can be won, but it is going to take a concentrated effort by everyone here in Washington to force China and other countries who violate intellectual property to comply with their WTO obligations, which requires these economic powers to enforce intellectual property laws in their own country. Thank you.

Senator BAYH. Mr. Demarais, thank you very much. We are happy to provide you a forum to vent your frustrations, but more than that we would like to provide you with action to address the problem that has been affecting you. And I wish I could say that your testimony here today was some sort of aberration, but regrettably it reflects the experience of too many American businessmen and women who have attempted—who have had to combat this kind of problem often without the kind of backup, as you say, from the generals in Washington that you deserve, so thank you for that.

By the way, Senator Martinez, you should know Mr. Huther said very nice things about you in your absence.

Senator MARTINEZ. I am sorry, I had to step out for a minute, I am sorry, but thank you, sir.

Senator BAYH. We will make sure the record notes that.

We begin some questions now. I will start, and then I will limit myself to 5 minutes and turn to you; and, if there are further questions, we will keep going.

I am going to start in the order in which our witnesses testified, but let me just start, Moisés, not only for you, but other panelists, judging by your written testimony and oral presentations today, it is my impression that all of you would agree this is a growing problem, a growing phenomena. It is not contained. It is not static. It

is, in fact, continuing apace, unfortunately. I think, Moisés, you particularly said that there is a degree of humility in our effort to combat this through traditional methods, so we should take—the steps that have been taken have been good and positive. We need to build on them, but take perhaps with a grain of salt or some degree of skepticism claims by anyone that material advancements have been made in containing the problem. Is that a fair description?

Mr. NAÍM. It is, Mr. Chairman, and essentially I want to reiterate a central message, and that is that I would love to see companies like ABRO and Mr. Demarais have incentive and additional possibilities to use their ingenuity to try to find ways that would make the copying of the products more difficult. I am not suggesting that there should not be legislation and all sorts of initiatives, local and international, to protect companies like ABRO from the fact that the products are stolen, but it would be wonderful if they are given—that that same ingenuity would be stimulated to find ways to make it harder because, by the time we make these processes take place, they will continue to suffer significant losses.

Senator BAYH. Are aware of any efforts along those lines to promote technologies that would combat—of course, in the entertainment arena, we are familiar, but perhaps a bit harder in the manufactured goods.

I must say when you first suggested it and I read it with in your submitted testimony, I think it is an excellent idea, but the first thing that crossed my mind today when you said it and I read it was to wonder how long it would be before the technology intended to protect IP was itself stolen.

Mr. NAÍM. That is one aspect, and the other aspect is tat not all products will be amenable to be protected by physical, by protections and technology, and we have to recognize that.

But, Mr. Huther can tell you that, in the business sector, this is already happening, a lot of the companies are complaining and are suffering, are just not waiting for legislation, are just not waiting for the patents. They are already taking matters in their own technological hands and investing significant amounts of money in research and development of products, processes, and technologies that would make copying harder. As you said, Mr. Chairman, in music and videos and technology and software, there is a significant push in that direction.

All I am saying is that it will be very interesting to find ways to create even more incentives for these companies to do this.

Senator BAYH. Let me ask you about, as we await the creation of technologies that enable us to make the kind of advancements we all hope to make, as you pointed out, this is a transnational problem that needs a multilateral response. Part of our legislative suggestion would be to identify countries with similar interests that are willing to adhere to state-of-the-art standards and try to build out from there.

The Justice Department has offered a different opinion. They do not think that is a useful suggestion. For example, they say that the exclusion of China and Russia from such an effort would make it ineffective. What is your reaction to that?

Mr. NAÍM. I tend to agree, Mr. Chairman, with the Justice Department. I think that this problem cannot be solved by excluding parts of the chain. And yes, China may be an epicenter of manufacturing and exports of counterfeited goods, but the United States is an epicenter of the distribution and purchase of these goods. So, there are as many violations of intellectual property taking place in the streets of the United States and in the United States by customers that are buying these illegal products as there are companies in China and elsewhere that are selling these products.

So, again, as I said in my statement, this is a problem that has suppliers, but it also has customers, and therefore it is very important to integrate, to have an integrated view of this.

Senator BAYH. I see my time—I have run up against the 5-minute limit.

Mel, why don't I turn to you.

Senator MARTINEZ. Thank you, Evan.

Mr. Naím, I wanted to ask you your thoughts, and I glean from your testimony it is a difficult issue for governments to enforce intellectual property in their own countries, but I was wondering how much of it was due to the difficulty of enforcement and how much was just benign neglect on their part and not caring enough to do it and, therefore, the implications of that in terms of trade agreements we entered into and the seriousness of purpose with which we might be able to enforce our trade agreements.

Mr. NAÍM. Yes, Senator Martinez, that is a very good question, and I agree with you and others that have noted the importance of placing this issue more in the center of the legislative efforts and taking more initiatives, and I welcome the bill, and I think this discussion and debate is very important.

So, there is some benign neglect, but I would just be careful and cautious in just chalking it down to lack of political will in some governments. That may be the case, but let us remember that there are very powerful economic interests associated with this industry, and that in many countries these interests are far more powerful even than governments.

I do not know that in some countries governments can risk the instability and political upheaval that would create taking on what is essentially in many countries the biggest game in town. For many countries, this is the largest employment-producing, revenue-producing industry, and people that are in it are involved and very often part of the government, are part of the military, part of the judiciary. And so it is—and I understand that working with governments that are so penetrated by the traffickers poses important questions and dilemmas.

All I am trying to show is the complexity of the issue and outline the limitations of legislative initiatives, not particularly this one, but to be careful not to create the illusion of solutions, but be careful and understand the limits of this activity.

Senator MARTINEZ. I think it is very enlightening what you say, but also a bit frightening to think that they may be bigger than the governments in other countries, but I would think that in places like India and China, which are such huge trading partners of ours, would be two places where more enforcement by the government and more of an interest by the government might be help-

ful, and I am not sure that would translate to every other country, but certainly there.

Mr. Huther, I wonder if you might touch on, through the Chamber, what do you see business doing to assist themselves in the vein of what was being suggested through their own technology and so forth to bring about change in this arena, even before legislation.

Mr. HUTHER. I would be delighted, Senator. The Chamber, together with its coalition, has seven active working groups, one of which focuses specifically on the issue of not only current technology but leading-edge or next-generation technology that could protect products at some various stages of the supply chain. We have learned from the preliminary research that old technology like radio frequency identifiers that have been around for 40 years or more, the counterfeiters and pirates have quite adroitly learned how to take advantage of that technology and turn it into a way of protecting their part of the supply chain, the illegitimate part. But you could find examples of holograms, you can find examples of watermarks, you can find examples of all different types of technology that industry has decided to try at sometimes considerable expense. It is not inexpensive to put something that costs a penny or a dime on literally millions of products that you are shipping all over the planet.

I think the bottom line is we are dealing with a very sophisticated, organized element that understands that, if they could defeat the technology, they could enhance the profitability of what they are doing. So, they are probably investing more resources in finding ways to invest in the technology we are trying to employ and transfer the benefits of to companies all over the planet, but most notably the small and medium enterprises who really do not have a good understanding of what this kind of technology can and should do for them, but it is a high-risk thing. The latest technology becomes yesterday's work-around for counterfeiters.

Senator MARTINEZ. Mr. Chairman, I wanted to thank you for the hearing and, as I told you at the beginning, I am going to catch an airplane to meet a speaking engagement in Florida tonight, but I want to thank the panel before being here. And it seems to me that at a time when entities that are really outside governments and outside nations present the greatest risk to national security that this type of an industry that also operates really outside the law and outside our governmental supervision and oversight and regulations is the very thing that, in confluence with one another, can continue to fund and enhance the threat to our national security that we see from terrorism.

So, it seems like an adjoining part of terrorism, if we think about it in that broader context. But thank you very much for this important hearing, and thank you.

Senator BAYH. Have a safe trip.

Mr. Yager, I would like to move to you, if I could, and I would like to get back to the Justice Department and some of the concerns they expressed about our proposed approach. Let's start with the issue of stovepiping and information sharing. The Department seems to be under the impression that information is being ade-

quately shared horizontally across government agencies and that that is not an issue. What is your opinion?

Mr. YAGER. Chairman Bayh, we have been doing work on this particular subject now for a number of years, and I guess it depends on your perspective, but I think maybe their expectations are not in the same place as the Congress's expectations in terms of information sharing.

For example, I think the performance of NIPLECC itself is one that I think that the Department of Justice has generally been supportive of the way that it was set up, but unfortunately it has not reached or has not changed the expectations of the Congress in a number of ways. For example, in the budget process, the Congress has made a number of comments about the quality of the NIPLECC report, particularly before the most recent report in saying it has not met their expectations in terms of timeliness and quality. So, I think, from the perspective of the Congress, it has not met expectations.

In addition, I think as Brad mentioned before, the private sector has also expressed some questions about the effectiveness of coordination in this area.

Finally, there is another group that has been set up—it is called the "Intellectual Property Center" (IPR Center)—which was supposed to be a combination of the Department of Justice and the FBI and Department of Homeland Security and ICE, which was supposed to be co-located where those folks work together to share leads. Unfortunately, the promise of that type of coordination has not been fulfilled, whereas the Department of Homeland Security has staff that apparently the Department of Justice has not been able to put full-time people in there. Now, I understand there is no one actually staffing that center.

So, the expectations may be the different. We think there is a lot of room for improvement. As I mentioned in my opening statement, we have another report coming out shortly which has to do with intellectual property protection as it is achieved at the U.S. border. And again, based on the work we have done both speaking to the private sector as well as talking to government officials, we think there are significant improvements that can be made in this area.

Senator BAYH. In your previous comments about the need for permanence, about the need for benchmarks for progress, about allocating scarce resources in the maximum way, all those sorts of things, are there additional steps on top of what is currently being done that would benefit our efforts?

Mr. YAGER. Absolutely. We think that many of these sound somewhat complicated to say national strategy, but, in fact, many of the things we talk about are very common sense, talking about the risks to achieving the strategy, talking about the resources. Obviously, trying to have a dialog with the Congress, you need to be able to talk about resource, resource needs, and what are the risks out there that need to be addressed; and we think that having that in a strategy where this kind of a dialog could take place both with the Congress, with the private sector, would help achieve some of those goals.

Senator BAYH. I thought it was interesting in Justice's letter to Chairman Leahy—and we do not have the Congressional Research

Service at the witness table today, but they debunked an additional critique which was kind of ironic since they claim that information sharing was very good in taking place, they suggested our approach would require them to share information, which the Justice Department was not accustomed to doing when it touched upon criminal prosecutions and that kind of thing, and the Congressional Research Service pointed out there are concerns in this regard were perhaps not well-founded.

Mr. YAGER. If I could make a couple of comments on that, I think the one thing that is important to remember is that Justice is a very important part of this group going forward, and the group going forward, their main purpose is intellectual property enforcement. So, it seems hard to imagine why the Justice Department would be so concerned about a group trying to weaken, in fact, what the group was set up to achieve. Again, Justice will be an important part of this group and they would be able to contribute to this discussion.

And I think also in that legislation you have the savings clause which allows them to determine whether the kinds of efforts or actions would be contrary to law or procedure or regulation, which I believe also seems to provide a reason why it would not necessarily challenge the kinds of things they have been concerned about.

If I could just make one more comment relative to Senator Martinez's point. When we are looking at different countries around the world—and I think this is a point that Dr. Naím said—there certainly is a difference between trying to enforce rules and get the cooperation of a country like Paraguay, which really does not have a large domestic market, does not have much of a legitimate trade, versus China, where, in fact, they do stand to lose a lot.

So, I think the comments about, you know, using leverage in a place like Paraguay or others that do not have a large domestic market or do not have a lot of legitimate business, certainly that would be a big challenge, whereas in China there is legal activity and significant issues to be lost.

The other thing is as China develops and develops more firms and some of the intellectual property on their own, there would be more domestic constituencies with which to work so that they can say, "Yes, we are losing our own intellectual property as well as risking U.S. firms or taking intellectual property from the United States."

So, we think there is an important distinction. There are certainly countries, even China, where providing incentives to improve will eventually help their domestic manufacturers, as well.

Senator BAYH. Dr. Naím, you were nodding your head?

Mr. NAÍM. I completely agree with Dr. Yager, and that is a point I made in my written statement about the need for selectivity and being very selective and very targeted in these efforts; and, therefore, that means differentiating the Chinas from the Paraguays becomes a very important element for their success and precondition for success of this bill.

Senator BAYH. Thank you.

Mr. Huther, about information sharing across government agencies, what has been the experience of your members in that regard? Can that be improved upon?

Mr. HUTHER. Yes, sir, and in many respects I communicated that as recently as Tuesday of this week.

Senator BAYH. I am sure your members found it to be shocking that the government was not seamlessly communicating horizontally across departments?

Mr. HUTHER. It is difficult to do, I must say. I formerly worked in the government, so I think I can speak with some sense of the complications and complexities that are associated with it.

Having said that, we believe that without that kind of information sharing and without creating an avenue for business to be kept informed on the basis of whatever intelligence business can provide into that data base or network of information is critical. The Chamber of Commerce is together with one agency and the Department of Commerce financing a new attempt to allow industry groups and law enforcement authorities to create via Interpol a new form of intelligence which could be monitoring activities globally realtime, so that, as a counterfeiting criminal act occurs in one country or one port, that information can be uploaded into the data base, and, more importantly, used very much like your legislation proposes: To be used by Interpol to compare and contrast against the same people doing money-laundering activities, such as Dr. Naím mentioned; or human trafficking, which oftentimes can be a subset of the counterfeiting piracy milieu.

So, we want to create as many opportunities to have new forms of information, share it as widely as we can, not to compel—we do not have the authority to compel people to use it, but to make it available to them in ways that the law enforcement community, especially in the United States, finds very helpful.

If I could comment on Dr. Naím's comment about the Justice Department view of the question of how one goes about dealing with other foreign governments being a step in the wrong direction, I have informed them that I do not see it that way. I see your legislation supplementing already extant agreements that the U.S. Government has entered into to deal with transnational counterfeiting shipments of both pirated as well as counterfeiting works.

So, if we can view this, what I see your legislation doing, or what we at the Chamber see your legislation doing, is adding value of condition of collaboration, condition of coordination, but elevating it to a much higher level. So, if I could use the word that all of this is aimed at "supplementing" what is out there and supplanting nothing, I think that is exactly what your legislation is designed to do.

Senator BAYH. We were looking for allies, both horizontally in our country and vertically internationally, to hear sharing information across jurisdictions. Obviously, we were scrupulous in writing it in a way that would not compromise criminal prosecutions, but, that said, sharing information to the extent possible to enhance our efforts across agency responsibilities; and then globally looking for countries with similar standards, similar interests, starting, as you said in your book, and building from there to include those who are

working toward meeting those standards. Obviously, those are part of the problem you have to engage. You just cannot leave them out.

Just two more questions for you. I take it by your comments you think that this should be a permanent priority for our government and not to depend on the ebbs and flows of priorities of different administrations and that is something useful that the legislation would bring, a permanence feature?

Mr. HUTHER. That is one of the primary advantages we see.

Senator BAYH. One other interesting thing I would appreciate your take on, I read with some interest the articles following the Administration's filing of the recent WTO complaint with regard to entertainment, intellectual property and that kind of thing, and some of the articles tend to suggest this, taken in concert with some other recent actions by the Administration, constitute a get-tough approach on trade, and there is always sort of a subtext. Is this the beginning of a protectionist move in our country, or are these steps designed to head off protectionist mood in our country, and your organization has been to expand for global trade. I hope it would be possible for expanding global trade, but also be for vigorous enforcement of the rules that govern global trade, in this case particularly those rules which in the long run will augment innovation that not only helps our country but all those who will benefit from it.

So, is it possible to be for more vigorous enforcement of intellectual property standards and at the same time be for trade and not be labeled a protectionist?

Mr. HUTHER. The Chamber does not find any inconsistency in those whatsoever. If the President of the Chamber, Tom Donahue, were here, he would use a phrase which he uses often, which is: The only thing the United States business community seeks in its international trading arrangements is a level playing field. And, frankly, I should point out, Mr. Chairman, that this is not just about China, this is not just about foreign governments. We have a very serious problem of inbred counterfeiting activity going on within the United States. So, we have to be as vigorous in our approach to making sure that we take steps to create an equivalent level playing field for our foreign trading partners, as we would expect them to do the same. And given the level playing field, we would look forward to the opportunity to have U.S. industry compete against the best in the rest of the world. That is all we ask.

Senator BAYH. That is always been my altitude, as well.

Mr. Demarais, to you, just one brief comment. I hope that your wife was not too offended as having been identified as a model.

Mr. DEMARAIS. She is talking looking for her contract now.

Senator BAYH. At least there was some silver lining to that unfortunate appropriation of her, of your family, which is one of the most brazen instances of packaging copying I have heard of.

The recent action by the Administration to help protect movies and DVDs and that sort of thing is good as far as it goes. As I mentioned in my opening comment, it covers about 4 percent of the intellectual property theft that we experience as a country, so let me ask you: Did that action do anything for you, your workers, your products?

Mr. DEMARAIS. The recent action regarding the film industry? No, but it does create some awareness. For years, we have talked about this. I mean, the movie industry has been affected by this. I think I first visited China 15 years ago, and the first thing I was offered when I got off the airplane was a dollar DVD or CD tapes. Clearly, they have been impacted by this maybe longer than we have in our industry. Since then, it is a snowball effect. Every product that we see out there that we make in the States and Europe is subject to be counterfeited, and we hope this is something that we will follow through on. It is a very frustrating experience to go out there and promote a brand and then have somebody knock it off at half the price.

And we failed to mention not only the price is an issue, but the quality is an issue. I do not know how many people have told me in certain markets in Dubai or Abu Dhabi where they sell ABRO products, they will not buy my products because certain ABRO products are failing. I get the samples back to my lab, I found out it is made in China or made in India. It is a double-edged sword, one you lose a market share because of price, and second because of quality. Some people take the attitude, "I can't trust the ABRO name," and this is something we tried to buildup over the last 40 or 50 years.

So, clearly, we want all industries protected, and it is going to take time.

Senator BAYH. Well, and I agree. My own view is that this was a good step. I hope it is a first step and shows a continuing dedication on the part of this Administration and future administrations to creating a level playing field that we discussed here today. If you read some of these articles, there is some people at least raise the possibility because of upcoming votes on fast track and free-trade agreements and that kind of thing, and I hope that that is not the case, that, as we expand trade, we also expand our devotion to making sure that intellectual property is protected. It is the only way the global economy is going to function well, in the long run, at least as far as I can tell, with the humility we have to bring to our efforts to make it that way, implicit in my comments.

My last question, and I will make a closing comments for all of us. You have been patient today and I appreciate your time in your efforts to join us. Just very briefly, Mr. Demarais, your workers, your company, what do they expect of our government when it comes to this kind of thing? When you experience these sorts of things you experience, what do they feel you then have a right to expect for us?

Mr. DEMARAIS. It is a great question because we have been asking that question for the last 10 years because, as I said, we are the foot soldiers out there. We are the ones going to market, not just my employees, but my customers. The authorized ABRO dealer that we set up in every country, he expects something, too, because we are—we made a decision to work one man in this market, he is buying the ABRO USA product, and all of a sudden the market is full of non-USA ABRO products. So, what does he expect? He cannot believe that we cannot protect the ABRO trademark, and obviously employees feel the same way.

What do we expect from the government? I just came back from a trip to West Africa. I met with three or four various embassies over there, and they said the same thing: We need to have some teeth in our legislation. We need to have people on the ground that can enforce. It is one thing to have these laws, but unless we can enforcement them, unless we can work with the various countries—and every country treats intellectual property differently; certain countries just blow the whole area off—you are not going to make much progress there, no matter how much legislation you have.

It is a combination of things. I think basically, though, once you get the legislation through, you have to have a way of enforcing it on the ground.

Senator BAYH. That is an excellent comment, and I will just end with a little story that I think illustrates your point and part of the challenge that we face here. Condoleezza Rice, her first trip following becoming Secretary of State, was to China, and there was a story in the New York Times about her discussions with her counterpart, one of the big hotels in Beijing, and part of her dialog with this individual was to say, "Look, we really need to have more vigorous enforcement of intellectual property protection, it is not fair," and he agreed with her comments and said that they just passed new laws, which, in fact, they had passed new laws, and that they would make it a priority and enforce the laws and that sort of thing.

The reporter concluded the story by writing that when he left the hotel where this dialog had taken place, there were some of these kiosks out directly in front of the hotel, where for sale you could find recent copies DVDs of the movie "The Aviator" before it had actually been released in our own country, and a Chinese policemen was sort of walking along, paused in front of the kiosk, inspected the goods and continued casually along his way, suggesting that there was some distance between the discussion at the highest levels of government and actual enforcement at the street level where, of course, it needs to take place.

So, perhaps some years ago we could afford to take a cavalier attitude about these things, but when it involves $250 billion annually and goes right to the heart of what perhaps will be our long-term comparative advantage, we need to be serious about this. We will never provide a perfect solution—it is not possible—but we need to try to do the best we can. I think you have the right to expect that, your workers—our taxpayers—have a right to expect that to bring a sense of urgency to this problem. That is why we had the hearing today.

I wanted to thank all of you for your time and insights, and now it is up to us to take this hearing, along with our colleagues on the Judiciary Committee, and translate this into action. Thank you all very much.

The committee is adjourned.

[Whereupon, at 3:33 p.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF SENATOR GEORGE V. VOINOVICH

Chairman Bayh and Subcommittee members, good afternoon, and thank you for the opportunity to testify before you at this important hearing. I welcome this hearing, and I am encouraged that you are examining the impact of intellectual property ("IP") theft on American competitiveness. It is another important step in raising public awareness about this issue and improving our coordination and enforcement efforts.

I am deeply concerned with the problem of intellectual property theft, particularly because such piracy has a significant impact on manufacturers, and manufacturing plays a vital role in Ohio's economy. I am proud that as Governor, my administration gave high priority to manufacturing, and that it grew during this time.

During my tenure as Governor, I worked with Ohio companies to conduct nine Ohio Business, Trade and Investment Missions, which were designed to open global markets for Ohio products. These trips spanned the globe and led to over 275 meetings between businesses and foreign government officials. These trade missions resulted in tremendous success for Ohio business—between 1991 and 1996, Ohio's export of manufactured goods increased by an unprecedented 48 percent! During that time, I am proud to say that big or small—Ohio manufacturers were participating in the global economy.

Since I arrived in the Senate, I have continued to fight for Ohio's manufacturers. Unfortunately, I have found that participation in the global economy has a dark underside—the theft of intellectual property and the piracy of goods. After I arrived in the Senate, I began to hear from some of the same Ohio companies that joined the economic trade missions when I was Governor. These companies were facing a serious and growing threat—the theft of their intellectual property and competition from pirated products.

As a result of these complaints, I held six oversight hearings about trade and intellectual property in the Homeland Security and Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, which I chaired. Too often during these hearings, I heard the same story. U.S. companies would sell their products overseas, often working with a local partner, and soon after, the partner or some other IP thief would counterfeit and start to sell the very goods that the U.S. companies had worked to export. Most disturbing to me was the fact that when I first started to conduct hearings into this problem, the response from our own government was almost non-existent.

During this time, I continued to express my concerns to the Administration, first to Secretary of Commerce Evans and USTR Zoellick, and more recently to my good friend Rob Portman when he was USTR, as well as Secretaries Gutierrez and Paulson. My message was simple; our government was not doing enough to address this problem, and it was failing to assist the companies that were subject to this theft.

I was not content just to voice my complaints. I voted against two separate free trade bills with Australia and Morocco because I was trying to get the Administration to focus on the problem of IP theft. Finally, in 2004, President Bush established the Strategy Targeting Organized Piracy initiative (the "STOP! initiative"). While I thought this was a good first step, I also believed these efforts needed an orchestra leader, someone who wakes up in the morning and goes to bed at night thinking about how to improve IP protection and enforcement. I was pleased that in July 2005 the President appointed Chris Israel to serve as the first U.S. Coordinator for International Intellectual Property Enforcement. While I believe these efforts have started to pay dividends, and I commend the President for taking the initiative to improve the government's response to the problem, the next step is for Congress to enact legislation to improve on this work, make it permanent, and give Congress an appropriate oversight role.

This is why during the 109th Congress, I partnered with the Chairman of this Subcommittee, who also recognized the devastation that this problem is having on U.S. manufacturing, to introduce the Intellectual Property Rights Enforcement Act ("IPREA"). Because we did not get this legislation enacted during the 109th Congress, this past February we reintroduced the IPREA ("S. 522"). The legislation would improve our existing enforcement efforts by: (1) providing better domestic enforcement coordination; (2) strengthening international enforcement by reaching out to like-minded countries and improving coordination with these countries; (3) improving congressional oversight by requiring the development of a government-wide IP strategic plan, and annual reports to Congress on how these efforts are faring; and (4) requiring the IP coordinator to work with IP stakeholders to develop resources to address their needs.

Just as important, this legislation keeps the next administration from reinventing the wheel in January 2009. In Washington, we all know that we come up with new ideas, and just as all the pieces are in place, we have a shift in power, and we lose our momentum. I do not want to lose the momentum we have gained under the STOP! initiative; rather, I want to continue and improve on it. Our democratic system is another thing that a lot of our competitors do not have to worry about. Countries like China—sadly—do not have Congressional elections every two years and Presidential elections every four years. They do not have to worry about losing their momentum because when a regime comes to power, it stays in power.

While I was disappointed that we were not able to get this legislation passed during the 109th Congress, Senator Bayh and I continue to work with businesses, industry groups, and labor groups to enact it. I have also spoken with Senators Leahy and Specter, Chairman and Ranking Member of the Senate Judiciary Committee, and I understand the Judiciary Committee will hold hearings on a number of IP items, including S. 522. I look forward to working with Members of the Judiciary Committee on this legislation, and I appreciate the willingness of the Chair and Ranking Member to examine this important issue. I would note that since we have reintroduced the legislation, over thirty organizations have endorsed it, including the U.S. Chamber of Commerce, the AFL-CIO, the National Association of Manufacturers and the UAW.

These organizations recognize that Congress can no longer ignore threats to our national economic security caused by IP theft; the cost is simply too great. Just to give you a few astonishing statistics, intellectual property theft is costing American business an estimated $250 billion each year and has resulted in an estimated 750,000 jobs lost. In the global economy, where competition is as high as I have ever seen in my lifetime, we cannot allow such staggering losses to continue. We must do a better job in combating these pirates of the 21st century.

Although I was encouraged by the USTR's announcement on Monday that it would file WTO cases against China over its deficiencies in IP protection and enforcement, I am still concerned that the scope of the problem is not fully appreciated, even within the United States. Unfortunately, too often, many believe that intellectual property theft is an issue limited to knock-off hand bags and pirated DVDs and CDs. The press coverage of the USTR's announcement seems to confirm this belief, as it largely focused on IP violations related to music and movies. Unfortunately, today, everything from medicine to airline and auto parts is counterfeited, and these fake products end up on store shelves here in the U.S. and around the world. These fake products are having a devastating impact on businesses both large and small, and pose a serious risk to consumers who cannot differentiate between genuine products and counterfeit knock-offs.

In the global economy, one of the only ways America can continue competing is through our own ingenuity—it is one of our best competitive advantages. American manufacturing is already at a disadvantage in the foreign marketplace. Our competitors have lower wages, and they are not plagued by the same stringent regulations and rising health care and energy costs. This is why we must address intellectual property theft head-on in order to protect America's competitive edge, so we ensure that our companies continue to enjoy the fruits of their investments and innovation.

Thank you for allowing me to testify today, and I look forward to working with Senator Bayh to pass S. 522, and I would encourage our colleagues to join us as we move this important legislation forward.

PREPARED STATEMENT OF MOISÉS NAÍM, PH.D.

EDITOR IN CHIEF, FOREIGN POLICY MAGAZINE

APRIL 12, 2007

Mr. Chairman, distinguished members of the Committee,

My name is Moises Naim and I am the Editor in Chief of Foreign Policy magazine. I am also the author of a recent book entitled *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy.* In this book, I summarize the findings of more than a decade of research into the inner workings and the consequences of illicit trafficking. I have studied the smuggling of everything from people and weapons to narcotics and human organs; and from endangered species to laundered money. I have also researched the trade in pirated products of all kinds, including medicines, automobiles, industrial parts, luxury goods, and a host of other commodities.

It is on this last illicit trade in counterfeits that our discussion focuses today, and on which I shall concentrate my remarks, Mr. Chairman.

Before I begin, I want to thank you, Chairman Bayh, and your colleagues on the Subcommittee on Security and International Trade and Finance for giving me the opportunity to come before you today. The trade in illicit goods is one of the most pressing issues of our time and I am pleased to come before the Subcommittee. I also want to recognize your leadership, Mr. Chairman, in tackling the problems created by the booming global trade in counterfeits, as well as your sincere interest in seeking innovative solutions to contain this growing threat.

Today I want to make five points concerning the international trade in stolen intellectual property—and offer one proposal for your consideration:

Firstly, the international trade in counterfeited goods is just one of many illicit trades that have boomed in the last decade and a half. The revolutionary changes in technology and politics that began in the early 1990s made the movement of people, goods, information, and money easier than ever before. These changes made it cheaper for businesses, non-governmental organizations, churches, terrorists, and countless other groups and bodies to operate globally, and with more ease than at any time in history.

Smugglers, always internationally-minded and always quick to detect and exploit price differences among neighboring nations, were among the first to take advantage of the opportunities created by globalization. Before the most recent wave of globalization, traffickers were primarily limited to illegally moving goods across borders between adjacent countries. But beginning in the 1990s, they could exploit price and cost differences globally, moving their merchandise across continents in large volumes. Their profits, technological and managerial sophistication, and their political influence increased accordingly.

Today, smuggling on a global scale has become one of the most potent forces reshaping the world's political and economic landscape. Yet, in contrast to the globalization of legitimate business, the media, or even terrorist organizations, the globalization of smuggling and its consequences has received little attention.

When we actually look at the illegal, international trade in people, narcotics, timber, industrial waste, human organs, weapons of mass destruction, and other goods, we see interesting similarities among them. While smuggling luxury products from Asia to Europe may look very different than smuggling cocaine from the Andes to Florida, and while trafficking Central American workers to California may look different than trafficking human kidneys from China to Canada, in fact many of the economic forces, organizational arrangements, business models, and behavior of the players are quite similar. They are not the same people or criminal networks. But the forces that drive them and the way they are organized bear much in common.

Governments' responses have also been quite similar—and, in all cases, unfortunately their success has proven very elusive. There is hardly any country that can claim major progress in containing the growth of any of these illicit trades. Therefore, a major implication of this first point is that much that can be learned from past and current efforts aimed at curbing illicit trafficking in other markets, and these lessons can be fruitfully applied to new initiatives aimed at limiting the trade in stolen intellectual property.

Secondly, a common factor in all of the illicit trades I have studied is how easy it is to overestimate governmental capabilities. One of the most common mistakes I have found in legislation aimed at controlling illicit trades is that, too often, it assumed that governments are more capable and effective than has proven to be true.

There are many reasons for this, but the most important is that while traffickers are global, governments are national. Governments have a hard time working outside their national jurisdictions. The natural habitat of government is inside a nation's borders. The natural habitat of traffickers is in-between national borders—in the cracks and shadows of globalization. While traffickers are perfectly at home when operating in these interstices, governments are slowed down, indeed often paralyzed, when working within them.

In this respect, globalization has had very asymmetrical consequences for traffickers and for the public servants charged with chasing them. New technologies, political changes, and policy reforms around the globe have had the effect of empowering criminals more than governments. In some instances, they have even demonstrably weakened governments.

This means that governments must exercise great caution when assigning new tasks and responsibilities to agencies and departments, and their bureaucrats. Government is indispensable in the fight to curb smuggling in general and counterfeits in particular. But in order to be effective, government needs to be selective in what it tries to achieve. It is unrealistic to expect government to combat every aspect of counterfeiting. History proves that it cannot. This approach will further burden al-

ready over-stretched governments and greatly reduce their effectiveness. Priorities are important in any policy discussion related to the fight against global counterfeiting. But, as you all know well, the hardest part of setting priorities is not deciding what to do, but rather deciding which goals, though admirable, must be cast aside. Nowhere is this more true than in the fight against smugglers, traffickers, and copycats.

The **third** point is that another frequent characteristic of anti-trafficking campaigns worldwide is that they all tend to concentrate more on constraining the supply of the smuggled goods, than on limiting their demand. This fact is well known in the case of the United States' War on Drugs where, resources spent on interdiction and eradication outstrip those aimed at curbing homegrown demand. It is also true of efforts against illegal migration which—at least until recently—were overwhelmingly devoted to stopping the illegal entry of foreigners while largely ignoring their American employers.

These strategies failed, and the same risk of failure is possible in the fight against counterfeiters. It is important to remember that the boom in pirated goods owes as much to a growing demand as it does to a growing supply. We are talking about literally billions of consumers around the world who are willing—indeed eager—to buy bogus facsimiles of products at a fraction of the price of the original, lawful goods. This market of consumers is served by millions of some of the most innovative, ruthless, and managerially and technologically sophisticated entrepreneurs at work today in the global economy.

This is a powerful market—and it is driven more by high profits than by low morals.

Approaching this fight purely from a law-enforcement or legalistic perspective will miss the fact that we are in the presence of a gigantic market with millions of buyers and sellers and immense volumes of merchandise and money changing hands.

The implication of my third point is this: it's necessary to think about incentives, profits, value-chains, and business models when thinking about how to align this market with the needs of society. It is important to recognize that, more often than not, it is futile for governments to work against global markets that are this massive and powerful. It is far better to use these market forces to help achieve your achieve goals. It is in this spirit that I will offer a proposal for your consideration in just a moment.

Before I do so, let me make a **fourth** point, which is simple and brief. No country can successfully tackle this problem acting alone. A global problem cannot be solved with unilateral, national efforts. Curbing the growth of the global counterfeiting market inevitably requires the effective coordination of several nations acting in concert. This is a slow, frustrating, and often ineffective process. But no other options exist. Anyone that argues in favor of a unilateral solution is mistaken. Such an approach will retard the adoption of more effective efforts, even as it creates the illusion that something is being done to deal with the problem.

Lastly, counterfeits are undermining a critical foundation of global capitalism: the intellectual property rights regime. It has now become apparent that patents, copyrights, and other legal instruments are not affording inventors, artists and, generally speaking, the owners of intellectual property adequate protection against the unlawful appropriation of their property. Brands, designs, formulas, software, and content that has value is being routinely stolen, copied, and sold worldwide at a fraction of the price charged by the original owners. Entire industries have been devastated by piracy.

It is equally apparent that the ability of governments to enforce the legal rights of owners of intellectual property is rapidly declining. Moreover, it is not at evident that this decline in the effectiveness of legal instruments to protect intellectual property can be stopped, reversed, or, in a great many cases, even slowed down. In some instances, it is not even clear that the countries in which major counterfeiting operations exist have governments with the political will or the institutional wherewithal to clamp down on counterfeiters. The massive scale of their operations, the employment they generate, the profits they yield, and the widespread accomplices that counterfeiters have in government, politics, law enforcement, the military, the media, and the judiciary make them a formidable political and economic force. (Too often they are also a formidable armed force.)

The implication of this point is not that governments have to abandon the fight to ensure that intellectual property rights are protected and enforced at home and abroad. Rather the implication is that governments need to be supported in their efforts by the most intensive use possible of anti-copying technologies. In many industries in the near future, technology and science are going to be far more effective at protecting intellectual property rights than legal instruments and governments. In some industries that is already, and increasingly, the case.

I believe that the effectiveness of anti-piracy legislation significantly depends on its ability to use markets and incentives to achieve its goals. By this I mean its ability to deal not only with the supply side of illicit markets, but also and with equal attention to the demand for the counterfeited goods and products. And naturally, on how well it incorporates the fact that this is a transnational problem whose alleviation will prove elusive to actions taken by governments acting alone.

One area that I do not believe has been sufficiently considered is the reality that there is much that technology can do (and is already doing) to safeguard some products from illegal copying. I therefore believe that a very promising, market-based solution is to include in any legislation mechanisms that will stimulate and accelerate the development and adoption of new technologies. Specifically, technologies that will make counterfeiting products far more difficult than what it is now. I am convinced that in the foreseeable future technology—not patents, sanctions, or other traditional means for fighting intellectual property theft—will become critical in protecting the intellectual property of innovators, creators, and artists.

Thank you, again, Mr. Chairman and members of the Subcommittee for affording me this opportunity to testify before you. I look forward to your questions and comments.

United States Government Accountability Office

GAO

Testimony

Before the Committee on Banking, Housing and Urban Affairs, Subcommittee on Security and International Trade and Finance, United States Senate

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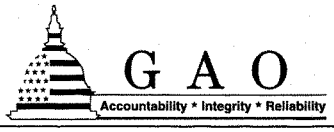
INTELLECTUAL PROPERTY

National Enforcement Strategy Needs Stronger Leadership and More Accountability

Statement of Loren Yager, Director
International Affairs and Trade



GAO-07-710T

Highlights

Highlights of GAO-07-710T, a testimony before the Committee on Banking, Housing and Urban Affairs, Subcommittee on Security and International Trade and Finance, United States Senate

Why GAO Did This Study

U.S. government efforts to protect and enforce intellectual property (IP) rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners and to avoiding health and safety risks resulting from the trade in counterfeit and pirated goods. IP protection and enforcement cut across a wide range of U.S. agencies and a coordinating structure has evolved to address coordination issues. First, Congress created the interagency National Intellectual Property Rights Law Enforcement Coordination Council (NIPLECC) in 1999. Later, in October 2004, the Bush administration initiated the Strategy Targeting Organized Piracy (STOP).

GAO's testimony focuses on (1) the effectiveness of NIPLECC and STOP as a coordinating structure to guide and manage U.S. government efforts; and (2) the extent to which STOP meets the criteria for an effective national strategy. This statement is based on GAO's November 2006 report (GAO-07-74), which included an assessment of STOP using criteria previously developed by GAO. In this report, we recommended that head of NIPLECC, called the IP Coordinator, in consultation with the National Security Council and relevant agencies (1) clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability roles and (2) take steps to ensure that STOP fully addresses the characteristics of a national strategy. The IP Coordinator concurred with our recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-07-710T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

April 12, 2007

INTELLECTUAL PROPERTY

National Enforcement Strategy Needs Stronger Leadership and More Accountability

What GAO Found

The current coordinating structure that has evolved for protecting and enforcing U.S. intellectual property rights lacks leadership and permanence, presenting challenges for effective and viable coordination for the long term. NIPLECC has struggled to define its purpose and retains an image of inactivity among the private sector. It continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role. In contrast, the presidential initiative called STOP, which is led by the National Security Council, has a positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration leaves office. While NIPLECC adopted STOP in February 2006 as its strategy for protecting IP overseas, its commitment to implementing STOP as a an effective national strategy remains unclear, creating challenges for accountability and long-term viability.

While STOP has energized agency efforts for protecting and enforcing intellectual property, its potential as a national strategy is limited since it does not fully address the desirable characteristics of an effective national strategy. For example, its performance measures lack baselines and targets to assess how well the activities are being implemented. In addition, STOP is missing key elements such as a discussion of risk management and designation of oversight responsibility. For instance, the strategy lacks a discussion of current or future costs, the types or sources of investments needed to target organized piracy, and processes to effectively balance the threats from counterfeit products with the resources available. While STOP partially addresses organizational roles and responsibilities, it does not discuss a framework for accountability among the STOP agencies, such as designating responsibility for oversight. Agency documents clarify some of the key elements of an effective national strategy that were not incorporated into STOP directly; however, the need to consult multiple documents underscores the strategy's lack of integration and limited usefulness as a management tool for effective oversight and accountability.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before the subcommittee to discuss our work on U.S. efforts to protect U.S. intellectual property (IP) rights. We appreciate the opportunity to further contribute to this discussion within the Congress. U.S. government efforts to protect and enforce intellectual property rights domestically and overseas are crucial to preventing billions of dollars in losses to U.S. industry and IP rights owners and addressing health and safety risks resulting from the trade in counterfeit and pirated goods. IP protection and enforcement cut across a wide range of U.S. agencies and functions, as well as those of foreign governments, making coordination among all parties essential. Many of these efforts are coordinated through the interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, and the Strategy for Targeting Organized Piracy (STOP) initiated by the White House in 2004. While NIPLECC is a coordinating council, STOP is a strategy coordinated by the National Security Council.

In my statement today, I will address two topics on IP enforcement: (1) the effectiveness of NIPLECC and STOP as a coordinating structure to guide and manage U.S. government efforts; and (2) the extent to which STOP meets the criteria for an effective national strategy. I am aware, Mr. Chairman, that you have co-sponsored proposed legislation to address some of the shortcomings of the current coordinating structure which impede effective IP enforcement and coordination.[1] In my statement today I will include some observations on how the proposed legislation addresses key weaknesses we have identified in our past work on IP enforcement.

[1]In February 2007, Senators Evan Bayh and George Voinovich, through the Congressional Committee on the Judiciary, submitted proposed legislation in Senate Bill 522, titled the "Intellectual Property Rights Enforcement Act". The bill aims to "safeguard the economic health of the United States and the health and safety of United States citizens by improving the management, coordination, and effectiveness of domestic and international intellectual property rights enforcement...."

To address these issues, I have drawn on completed GAO studies,[2] particularly a report that we completed on STOP and NIPLECC last fall. We examined NIPLECC and STOP official documents and reviewed the legislative history of NIPLECC. Our November 2006 study assessed the extent to which STOP serves as a national strategy for combating trade in counterfeit and pirated goods by using the six desirable characteristics of an effective national strategy developed in previous GAO work.[3] GAO has used this methodology to assess and report on the administration's strategies relating to combating terrorism, restructuring DOD's global force posture, and rebuilding Iraq.[4] National strategies with these desirable characteristics offer policymakers and implementing agencies a management tool that can help ensure accountability and more effective results. I should also mention that we have a number of other studies soon to be published that are also related to IP enforcement. These include (1) a study that we have completed for Senator Voinovich focusing on IP enforcement at the U.S. border, and (2) additional work on a Customs and Border Protection (CBP) program called the "in-bond system" that allows goods to transit the United States and enter U.S. commerce at a port other than the port of arrival. In conducting the GAO studies, we have performed work at multiple U.S. agency headquarters in Washington, D.C., and at U.S. ports of entry and agency field offices. In addition, we met with representatives from multiple industry associations and companies that are affected by IP violations, such as manufacturing, entertainment, luxury goods, and pharmaceutical industries. We also met with the head of NIPLECC, the IP Coordinator, to obtain information on steps taken to implement the recommendations presented in our November 2006 study. We also examined the March 2007 STOP document — the most current strategy document. All work was conducted in accordance with generally accepted government auditing standards.

[2]See GAO, *Intellectual Property: Strategy Targeting Organized Piracy (STOP) Requires Changes for Long-term Success*, GAO-07-74 (Washington, D.C.: November 2006). GAO, *Intellectual Property: Initial Observations on the STOP Initiative and U.S. Border Efforts to Reduce Piracy*, GAO-06-1004T (Washington, D.C.: July 26, 2006). GAO, *Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO-04-912 (Washington, D.C.: Sept. 8, 2004).

[3]GAO, *Combating Terrorism: Evaluation of Selected Characteristics in National Strategies Related to Terrorism*, GAO-04-408T (Washington, D.C.: Feb. 3, 2004).

[4]GAO, *Defense Management: Comprehensive Strategy and Annual Reporting Are Needed to Measure Progress and Costs of DOD's Global Posture Restructuring*, GAO-06-852, (Washington, D.C.: Sept. 13, 2006); and *Rebuilding Iraq: More Comprehensive National Strategy Needed to Help Achieve U.S. Goals*, GAO-06-788 (Washington, D.C.: June 28, 2006).

Summary

The current coordinating structure for U.S. protection and enforcement of intellectual property rights lacks clear leadership and permanence, hampering the effectiveness and long-term viability of such coordination. Created in 1999 to serve as the central coordinating structure for IP enforcement across federal agencies, NIPLECC has struggled to define its purpose, retains an image of inactivity within the private sector, and continues to have leadership problems despite enhancements made by Congress in December 2004 to strengthen its role.[5] In addition, in July 2006, Senate appropriators expressed concern about the lack of information provided by NIPLECC on its progress. In contrast, the presidential initiative called STOP, which is led by the National Security Council, has a positive image compared to NIPLECC, but lacks permanence since its authority and influence could disappear after the current administration leaves office. Many agency officials said that STOP has increased attention to IP issues within their agencies and the private sector, as well as abroad, and attribute that to the fact that STOP came out of the White House, thereby lending it more authority and influence. While NIPLECC adopted STOP as its strategy for protecting IP overseas in February 2006, its commitment to implementing STOP as a successful strategy remains unclear, creating challenges for accountability and long-term viability. For instance, although NIPLECC's most recent annual report describes many STOP activities, it does not explain how the NIPLECC principals plan to carry out their oversight responsibilities mandated by Congress to help ensure a successful implementation of the strategy. In addition, the STOP strategy document has not been revised to mention NIPLECC's oversight role.

STOP is a first step toward an integrated national strategy to protect and enforce U.S. intellectual property rights, and it has energized agency efforts. However, we found that STOP's potential as a national strategy is limited because it does not fully address important characteristics of an effective national strategy. For example, its performance measures lack

[5]In December 2004, Congress augmented NIPLECC's capabilities in the Consolidated Appropriations Act of 2005. The act called for NIPLECC to (1) establish policies, objectives, and priorities concerning international IP protection and enforcement; (2) promulgate a strategy for protecting American IP overseas; and (3) coordinate and oversee implementation of the policies, objectives, and priorities and overall strategy for protecting American IP overseas by agencies with IP responsibilities. The act appropriated $2 million for NIPLECC's expenses through the end of fiscal year 2006. It also created the position of the Coordinator for International Intellectual Property Enforcement, also known as the "IP Coordinator," to head NIPLECC.

baselines and targets to assess how well the activities are being implemented. In addition, the strategy lacks a risk management framework and a discussion of current or future costs – important elements to effectively balance the threats from counterfeit products with the resources available. Although STOP identifies organizational roles and responsibilities with respect to individual agencies' STOP activities, it does not specify who will provide oversight and accountability among the agencies carrying out the strategy. While individual agency documents include some key elements of an effective national strategy, they have not been incorporated into the STOP documents. This lack of integration underscores the strategy's limited usefulness as a management tool for effective oversight and accountability by Congress as well as the private sector and consumers who STOP aims to protect.

In our November 2006 report on this subject, we made two recommendations to clarify NIPLECC's oversight role with regard to STOP and improve STOP's effectiveness as a planning tool and its usefulness to Congress: First, we recommended that the head of NIPLECC, called the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy. Second, we recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, take steps to ensure that STOP fully addresses the characteristics of an effective national strategy.

In its response to our recommendations, the IP Coordinator said his office planned to review them and identify opportunities for improvement based on those recommendations, where appropriate. Our discussions with the IP Coordinator, in preparation for this testimony, indicated that NIPLECC has taken some steps to address GAO's recommendations, such as working with the Office of Management and Budget (OMB) to understand agencies' priorities and resources related to IP enforcement. The proposed legislation at the forefront of discussion today proposes changes that address weaknesses we found in the current coordinating structure. The proposed legislation eliminates NIPLECC and creates a new coordinating structure called the Intellectual Property Enforcement Network, with leadership emanating from the White House under the auspices of the Office of Management and Budget. Although past congressional action also required NIPLECC to develop a strategic plan, the current legislation requires the new coordinating structure to prepare a strategic plan that addresses key elements of an effective national strategic plan, building in

mechanisms for accountability and oversight. These changes are consistent with the key findings of our report.

Background

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation. However, the legal protection of intellectual property varies greatly around the world, and several countries are havens for the production of counterfeit and pirated goods. Technology has facilitated the manufacture and distribution of counterfeit and pirated products, resulting in a global illicit market that competes with genuine products and complicates detection and actions against violations. High profits and low risk have drawn in organized criminal networks, with possible links to terrorist financing. The public is often not aware of the issues and consequences surrounding IP theft. Industry groups suggest that counterfeiting and piracy are on the rise and that a broader range of products, from auto parts to razor blades, and from vital medicines to infant formula, are subject to counterfeit production. Counterfeit products raise serious public health and safety concerns, and the annual losses that companies face from IP violations are substantial.

Given the increasing threats to America's economy, health, and safety, U.S. government agencies have undertaken numerous efforts to protect and enforce intellectual property rights, and a structure to coordinate these IP enforcement efforts evolved. In 1999, Congress created the interagency National Intellectual Property Law Enforcement Coordination Council (NIPLECC) as a mechanism to coordinate U.S. efforts to protect and enforce IP rights in the United States and overseas.[6] In October 2004, the Bush Administration announced the Strategy Targeting Organized Piracy (STOP) to "smash 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." Although both NIPLECC and STOP were created to improve the United States' IP enforcement and protection efforts, they were established under different authorities – NIPLECC as a congressional mandate and STOP as a presidential initiative led by the White House under the auspices of the National Security Council. Table 1 compares NIPLECC and STOP.

[6]NIPLECC was established under Section 653 of the Treasury and General Government Appropriations Act, 2000 (Pub. L. No.106-58), 15 U.S.C. 1128.

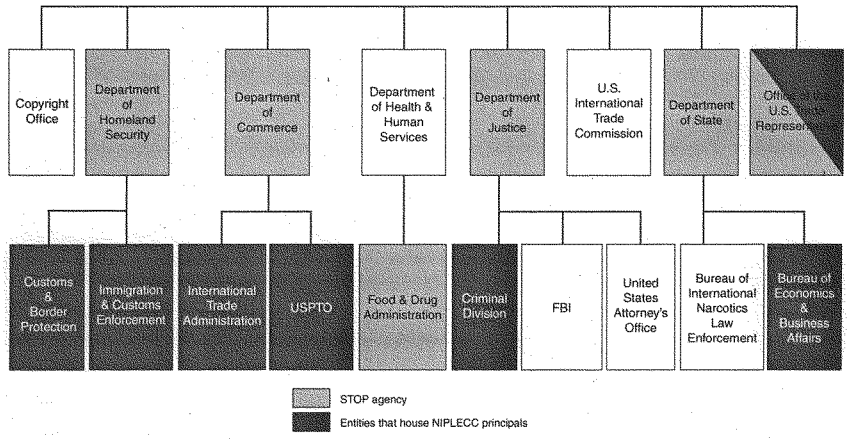
Table 1: Comparison of Features of NIPLECC and STOP

Features	NIPLECC	STOP
Origin	Congressional mandate, September 1999	White House initiative, October 2004
Leadership	• Coordinator for International Intellectual Property Enforcement (IP Coordinator) • Co-Chairs from USPTO and Justice report to Coordinator	• National Security Council
Dedicated funding	$2 million (for fiscal years 2005 and 2006) $900,000 (for fiscal years 2007)	None
Dedicated staff	As of October 2006: Seven (IP Coordinator, 4 staff members and 2 detailees) As of April 2007: Five *(IP Coordinator, 4 staff members and 1 detailee)*	None
Meetings	Quarterly	Monthly

Source: GAO.

STOP and NIPLECC share similar goals, including coordination of IP protection and enforcement, and involve nearly the same agencies. NIPLECC's membership is designated by statute and includes specific positions by agencies, whereas agencies that participate in STOP overlap with NIPLECC members, but do not designate any specific positions. (See figure 1.)

Figure 1: Primary U.S. Government Agencies and Entities Supporting U.S. Intellectual Property Rights



Source: GAO.

Note: NIPLECC is required to consult with the Register of Copyrights on copyright law enforcement matters. Immigration and Customs Enforcement, while not an original member, was reported as a member of NIPLECC in the council's fifth annual report issued in September 2006.

Lack of Leadership and Permanence Hampers Effectiveness and Long-Term Viability of IP Enforcement Coordinating Structure

The U.S. government has a coordinating structure for IP enforcement, but the structure's effectiveness is hampered by a lack of clear leadership and permanence, and despite some progress, it has not been developed in a manner that makes it effective and viable for the long term. NIPLECC and STOP form the central coordinating structure for IP enforcement across federal agencies. However, NIPLECC continues to have problems in providing leadership despite enhancements made by Congress, and STOP's authority and influence, which result from its status as a presidential initiative, could disappear after the current administration leaves office. While the current IP enforcement coordinating structure has contributed to some progress – particularly in increasing attention to IP enforcement domestically and abroad through STOP – NIPLECC's commitment to implementing STOP as a strategy remains unclear, creating

a challenge for effective accountability and the long-term viability of IP enforcement.

NIPLECC and STOP Originated Under Different Authorities

In 1999, Congress created NIPLECC to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities. The council's membership is designated by statute and includes six federal agencies. The Commissioner of Patents and Trademarks (USPTO) and Assistant Attorney General, Criminal Division from the Department of Justice serve as NIPLECC's co-chairs. NIPLECC's authorizing legislation included no specific dollar amount for funding or staff. Congress also required NIPLECC to report its coordination efforts annually to the President and various Congressional committees.[7]

Our September 2004 report noted that NIPLECC had struggled to define its purpose, had little discernible impact, and had not undertaken any independent activities, according to interviews with both industry officials and officials from its member agencies, and as evidenced by NIPLECC's own annual reports.[8] From 1999 through the end of 2004, NIPLECC produced three annual reports that did little more than provide a compilation of individual agency activities. We also concluded in our 2004 report that if Congress wished to maintain NIPLECC and take action to increase its effectiveness, it should consider reviewing the council's authority, operating structure, membership, and mission.

Congress addressed NIPLECC's lack of activity and unclear mission in the 2005 Consolidated Appropriations Act in December 2004. The act called for NIPLECC to (1) establish policies, objectives, and priorities concerning international IP protection and enforcement; (2) promulgate a strategy for protecting American IP overseas; and (3) coordinate and oversee implementation of the policies, objectives, and priorities and overall strategy for protecting American IP overseas by agencies with IP responsibilities. It also created the position of the Coordinator for International Intellectual Property Enforcement, also known as the "IP Coordinator," to head NIPLECC. The IP Coordinator is appointed by the President and may not serve in any other position in the federal

[7]NIPLECC is required to report annually to Committees on Appropriations and on the Judiciary of the Senate and the House of Representatives.

[8]GAO-04-912.

government. The co-chairs for NIPLECC are required to report to the IP Coordinator.

Unlike NIPLECC, STOP from its beginning has been characterized by a high level of active coordination and visibility. In October 2004, the President launched STOP, an initiative led by the White House under the auspices of the National Security Council, to target cross-border trade in tangible goods and strengthen U.S. government and industry IP enforcement actions. STOP members are the same agencies that house NIPLECC members, except that STOP includes the Food and Drug Administration. According to a high-level official who participated in the formation of STOP, the initiative was intended to protect American innovation, competitiveness, and economic growth. It stemmed from the recognition that U.S. companies needed protection from increasingly complex and sophisticated criminal counterfeiting and piracy. As part of STOP, agencies began holding meetings, both at working levels and higher, to coordinate agency efforts to tackle the problem.

STOP is viewed as energizing U.S. IP protection and enforcement efforts and is generally praised by agency officials and industry representatives. The IP Coordinator stated in congressional testimony that STOP has built an expansive interagency process that provides the foundation for U.S. government efforts to fight global piracy. Several agency officials participating in STOP said that it gave them the opportunity to share ideas and support common goals. Many agency officials with whom we spoke said that STOP had brought increased attention to IP issues within their agencies and the private sector, as well as abroad, and attributed that to the fact that STOP came out of the White House, thereby lending it more authority and influence. One agency official pointed out that IP was now on the President's agenda at major summits such as the G8 and European Union summits.[9] In addition, most private sector representatives with whom we spoke agreed that STOP was an effective communication mechanism between business and U.S. agencies on IP issues, particularly through the Coalition Against Counterfeiting and Piracy (CACP), a cross-industry group created by a joint initiative of the Chamber of Commerce and the National Association of Manufacturers.

[9]The G8 is an annual summit that involves nine countries, including Canada, France, Germany, Italy, Japan, the United Kingdom, Russia, and the United States. The European Commission President is also a G8 member.

IP Enforcement Coordinating Structure Lacks Clear Leadership and Permanence

The structure that has evolved to coordinate U.S. efforts to protect and enforce IP rights, NIPLECC and STOP, lacks clear leadership and permanence. Our November 2006 report noted that, despite the re-energized focus on IP enforcement as a result of STOP, the ambiguities surrounding NIPLECC's implementation of STOP as a strategy create challenges for the long-term viability of a coordinated federal IP enforcement approach. While NIPLECC adopted STOP as its strategy for protecting IP overseas in February 2006, its commitment to implementing STOP as a successful strategy remains unclear. For instance, it is not clear how NIPLECC will provide a leadership role in implementing STOP. While NIPLECC's most recent annual report describes many STOP activities and the IP Coordinator's direct involvement in them, it does not explain how the NIPLECC principals and the IP Coordinator plan to carry out their oversight responsibilities mandated by Congress to help ensure successful implementation of the strategy. In addition, while the current STOP strategy document (March 2007) states that the NIPLECC annual report provides details on interagency collaboration to achieve STOP goals, STOP does not mention NIPLECC's oversight role or articulate a framework for oversight and accountability among the STOP agencies carrying out the strategy.

Although Congress enhanced NIPLECC's powers through the Consolidated Appropriations Act of 2005, we found that NIPLECC retains an image of inactivity within some of the private sector. For example, representatives of almost half of the 16 private sector groups with whom we spoke expressed the opinion that NIPLECC was inactive or a nonplayer. In addition, representatives from 10 of these groups were unclear about NIPLEC's role, and many said that they were unclear about the difference between NIPLECC and STOP. In July 2006, Senate appropriators expressed concern about the lack of information provided to Congress by NIPLECC on its progress.

In contrast with NIPLECC, agency officials and members of the private sector attribute STOP's effectiveness to its status as a White House initiative and its resulting authority and influence. However, it lacks permanence since it is a presidential initiative and may disappear after the current administration leaves office. Furthermore, while agency officials we interviewed generally considered STOP to be the U.S. government's IP strategy, NIPLECC officials have sent mixed signals about effectively implementing STOP. One official representing NIPLECC said that the STOP strategy should have goals and objectives, including metrics to measure progress about which the IP Coordinator should report. However,

a NIPLECC representative from another agency told us that this document was a fact sheet that accounted for administration efforts rather than a strategy. Similarly, a NIPLECC representative from a third agency was skeptical about whether STOP should be assessed as NIPLECC's strategy. Finally, the IP Coordinator stated in March 2006 congressional testimony that STOP is NIPLECC's strategy; however, he also told us that STOP was never meant to be an institutional method for reporting priorities and metrics to the President or Congress, or to manage resources.

Improvements Needed to Achieve an Effective National IP Enforcement Strategy

STOP is a first step toward an integrated national strategy for IP protection and enforcement and has energized agency efforts. However, we found that STOP's potential as a national strategy is limited because it does not fully address important characteristics that we believe would improve the likelihood of its long-term effectiveness and ensure accountability. We found that some strategy documents belonging to individual STOP agencies supplemented some of the characteristics not fully addressed in STOP; however, the fact that they have not been systematically incorporated into STOP limits its usefulness as an integrated strategy to guide policy and decision makers in allocating resources and balancing priorities, and does not inform the private sector and consumers that it aims to protect.

Current IP Enforcement Structure Does Not Meet All the Characteristics of an Effective National Strategic Plan

While national strategies are not required by executive or legislative mandate to address a single, consistent set of characteristics, GAO has identified six desirable characteristics of an effective national strategy. It is important that a national strategy contain these characteristics because they enable implementers of the strategy to effectively shape policies, programs, priorities, resource allocations, and standards so that federal departments and other stakeholders can achieve the desired results. National strategies provide policymakers and implementing agencies with a planning tool that can help ensure accountability and effectiveness.

We found that STOP partially addresses five of the six characteristics and their key elements. Figure 2 provides the results of our analysis and indicates the extent to which STOP addresses the desirable characteristics of an effective national strategy.[10]

[10]For full details of GAO's analysis of characteristics of an effective national strategy, see GAO-07-74.

Figure 2: Extent to Which STOP Addresses GAO's Desirable Characteristics of an Effective National Strategy

1. Purpose, scope, methodology		◐	
Purpose	1a. The impetus that led to the strategy being written, such as a statutory requirement, mandate, or key event		◐
	1b. The strategy's purpose		●
Scope	1c. Key terms, major functions, mission areas, or activities the strategy covers		●
Methodology	1d. The process that produced the strategy, (e.g., what organizations or offices drafted the document, whether it was the result of a working group, or which parties were consulted in its development)		○
2. Problem definition and risk assessment		◐	
Problem definition	2a. The problems the strategy intends to address		●
	2b. The causes of the problems		◐
	2c. The operating environment		◐
Risk assessment	2d. The threats the strategy is directed toward		◐
	2e. Discusses the quality of data available, e.g., constraints, deficiencies, and "unknowns"		○
3. Goals, subordinate objectives, activities, and performance measures		◐	
Goals and subordinate objectives	3a. Addresses the overall results desired, i.e., an "end-state"		●
	3b. Identifies strategic goals and subordinate objectives		◐
Activities	3c. Identifies specific activities to achieve results		●
Performance measures	3d. Priorities		○
	3e. Milestones		○
	3f. Output-related and outcome-related performance measures		◐
	3g. The process to monitor and report on progress		○
	3h. The limitations on progress indicators		○
4. Resources, investments, and risk management		○	
Resources and investments	4a. The cost of the strategy		○
	4b. The sources (e.g., federal, state, local, and private) of resources or investments needed		○
	4c. The types of sources or investments needed (e.g. budgetary, human capital, information technology, research and development, contracts)		○
Risk management	4d. Where resources or investments should be targeted to balance risks and costs		○
	4e. Resource allocation mechanisms		○
	4f. How risk management will aid implementing parties in prioritizing and allocating resources		○
5. Organizational roles, responsibilities, and coordination		◐	
Organizational roles and responsibilities	5a. Who will be implementing the strategy		●
	5b. Lead, support, and partner roles and responsibilities of specific federal agencies, departments, or offices (e.g., who is in charge during all phases of the strategy's implementation)		◐
	5c. Which organizations will provide the overall framework for oversight and accountability		○
Coordination	5d. How they will coordinate both within agencies and with other agencies		◐
	5e. The process for how conflicts will be resolved		○
6. Integration		◐	
	6a. Addresses how the STOP! strategy relates to each agency's strategies, goals, and objectives		◐

● Fully addresses ◐ Partially addresses ○ Does not address

Source: GAO.

STOP addresses goals and activities but lacks important elements for assessing performance.

- Although STOP identifies five main goals,[11] it does not consistently articulate their objectives and is missing key elements related to assessing performance such as priorities, milestones, and a process for monitoring and reporting on progress. For example, under its goal of pursuing criminal enterprises, STOP clearly lists objectives such as increasing criminal prosecutions, improving international enforcement, and strengthening laws. Whereas STOP does not articulate clear objectives for its goal of working closely and creatively with U.S. industry. Also, STOP activities include implementing a new risk model to target high-risk cargo but do not specify time frames for its completion. Although STOP cites output-related performance measures[12]—such as the USPTO STOP hotline receiving over 950 calls during fiscal year 2005 and a 45 percent increase in the number of copyright and trademark cases filed from fiscal year 2004 to fiscal year 2005—these figures are presented without any baselines or targets to facilitate the assessment of how well the program is being carried out. In addition, STOP cites outcome-related performance measures for only few of many activities included in the strategy.[13]

STOP does not address elements relevant to resources, investments, or risk management, limiting the ability of decision makers to determine necessary resources, manage them, and shift them with changing conditions.

- STOP does not identify current or future costs of implementing the strategy, such as those related to investigating and prosecuting IP-related crime or conducting IP training and technical assistance, nor does it identify the sources or types of resources required. While the strategy states that "American businesses lose $200 to $250 billion a year to pirated and counterfeit goods," it does not provide a detailed discussion of the economic threat to U.S. businesses. Further it does not discuss other risks

[11]STOP's goals are to: (1) empower American innovators to better protect their rights at home and abroad; (2) increase efforts to seize counterfeit goods at our borders; (3) pursue criminal enterprises involved in piracy and counterfeiting; (4) work closely and creatively with U.S. industry; and (5) aggressively engage our trading partners to join our efforts.

[12]An "output measure" records the actual level of activity or whether the effort was realized and can assess how well a program is being carried out.

[13]An "outcome measure" assesses the actual results, effects, or impact of an activity compared with its intended purpose.

such as potential threats to consumer health and safety from counterfeited products or discuss how resources will be allocated given these risks. STOP partially addresses organizational roles, responsibilities, and coordination but lacks a framework for oversight or integration.

- STOP does identify lead, support, and partner roles for specific activities. For example, it identifies the White House as leading STOP and indicates partnering roles among agencies, such as the joint role of the Department of Homeland Security's Immigration and Customs Enforcement (ICE) and the Department of Justice's FBI in running the National Intellectual Property Rights (IPR) Center. However, STOP does not discuss a process or framework for oversight and accountability among the agencies carrying out the strategy. Although STOP discusses specific instances of coordination among member agencies, it lacks a clear and detailed discussion of how overall coordination occurs. For instance, there is no mention of STOP meetings, objectives, or agendas.

- We found that the STOP strategy does not consistently articulate how, as a national strategy, it relates to the strategies, goals, and objectives of federal agencies that participate in STOP. For example, under its goal of pursuing criminal enterprises, STOP does not discuss how the objectives of the Department of Justice's task force might be linked to the goals and objectives found in other agency IP enforcement strategies such as the Department of Homeland Security's ICE and CBP. It is important that STOP not only reflect individual agencies' priorities and objectives but also integrate them in a comprehensive manner, enhancing collaboration among the agencies and providing a more complete picture to policy makers with oversight responsibilities. While some of these elements of a national strategy are addressed in individual agency documents, the absence of clear linkages and the need to consult multiple agency documents underscores the strategy's lack of integration and limits the usefulness of STOP as a management tool for long-term effective oversight and accountability.

GAO Recommended Actions to Improve IP Leadership and Accountability Among U.S. Agencies

In our November 2006 report on this subject, we made two recommendations to clarify NIPLECC's oversight role with regard to STOP and improve STOP's effectiveness as a planning tool and its usefulness to Congress. We recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, clarify in the STOP strategy how NIPLECC will carry out its oversight and accountability responsibilities in implementing STOP as its strategy. In addition, we recommended that the IP Coordinator, in consultation with the National Security Council and the six STOP agencies, take steps to

ensure that STOP fully addresses the six characteristics of a national strategy.

We provided the agencies that participate in STOP and NIPLECC with a draft of the report for their review and comment and received written comments from the U.S. Coordinator for International Property Enforcement (IP Coordinator). In his comments, the IP Coordinator concurred with our recommendations, stating that his office planned to identify opportunities for improvement based on those recommendations. Our discussions with the IP Coordinator, in preparation for this testimony, indicated that the Office of the U.S. Coordinator for International Property Enforcement has taken some steps to address GAO's recommendations. For example, the IP Coordinator has been working with the Office of Management and Budget (OMB) to understand agencies' priorities and resources related to IP enforcement. In addition, the council has been coordinating with the Department of State and USPTO to examine the U.S.'s training portfolio and identify areas where capacity building and more training is needed overseas. The IP Coordinator stated that no steps have been taken with regard to changing the accountability framework under NIPLECC since, he believes, this is addressed through regular reporting to Congress via annual reports and testifying at hearings, and meetings with federal agencies involved in IP enforcement and the private sector.

The Intellectual Property Rights Enforcement Act under discussion today proposed by Senators Bayh and Voinovich recommends changes that may help address weaknesses we found in the current coordinating structure and the national IP enforcement strategy as well as improve coordination with private sector and international counterparts.

The legislation eliminates NIPLECC and creates a new entity called the Intellectual Property Enforcement Network (IPEN), to coordinate domestic and international IP enforcement efforts among U.S. agencies. The membership of IPEN involves most of the same agencies that are currently members for NIPLECC, and like NIPLECC, has an Intellectual Property Enforcement Coordinate appointed by the President. A clear difference between IPEN and NIPLECC, however, is that the leadership emanates from the White House. Under IPEN, the Deputy Director for Management of the Office of Management and Budget would serve as the chairperson for the network. While GAO does not have an opinion on whether OMB is the appropriate agency to coordinate IP enforcement and protection, we believe it is important to note that IPEN retains the

authority and leadership most valued under STOP— the role of the White House in providing leadership and authority.

The legislation addresses weaknesses we identified in the current national strategy by requiring the development of a strategic plan within 6 months from the date the bill is enacted, and updated every 2 years following. The requirements of the strategic plan, as laid out in the bill, include performance measures and risk analysis along with other key elements for oversight and accountability that we have identified as important to an effective national strategic plan.

Conclusions

The challenges of IP piracy are enormous and will require the sustained and coordinated efforts of U.S. agencies, their foreign counterparts, and industry representatives to be successful. As we pointed out Mr. Chairman, NIPLECC's persistent difficulties create doubts about its ability to carry out its mandate – that of bringing together multiple agencies to successfully implement an integrated strategy for IP protection and enforcement that represents the coordinated efforts of all relevant parties. STOP has brought attention and energy to IP efforts within the U.S. government, however, as a presidential initiative, STOP lacks permanence beyond the current administration. This poses challenges to its long-term effectiveness because STOP depends upon White House support. In addition, STOP does not fully address the desirable characteristics of an effective national strategy that we believe would improve the likelihood of its long-term viability and ensure accountability. This limits its usefulness as a management tool for effective oversight and accountability by Congress as well as the private sector and consumers who STOP aims to protect. As we have pointed out, the Intellectual Property Rights Enforcement Act under discussion today addresses key shortcomings of the current IP coordinating structure that we have identified, including establishing a clearer leadership and framework for accountability.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other members of the subcommittee may have at this time.

Contacts and Acknowledgments

Should you have any questions about this testimony, please contact Loren Yager at (202) 512-4347 or yagerl@gao.gov. Other major contributors to this testimony were Christine Broderick, Adrienne Spahr, Nina Pfieffer, Shirley Brothwell, and Jasminee Persaud.

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PREPARED STATEMENT OF BRAD HUTHER

SENIOR ADVISOR FOR INTELLECTUAL PROPERTY ENFORCEMENT,
U.S. CHAMBER OF COMMERCE

APRIL 12, 2007

Good afternoon Chairman Bayh and members of the subcommittee. My name is Brad Huther and I am appearing before you today on behalf of the U.S. Chamber of Commerce. The Chamber is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector and region of the economy.

Thank you for the leadership you and Senator Voinovich have provided on an issue of utmost importance to the U.S. business community.

The Chamber commends recent government-wide efforts to increase attention to the global threat of counterfeiting and piracy. The last few years have witnessed the launch of several public-private partnerships designed to combat intellectual property (IP) crime including the Administration's Strategy Targeting Organized Piracy or STOP! initiative, the Chamber's Global Anti-counterfeiting and Piracy Initiative and similar regional coordination efforts within Europe and North America, just to name a few. The current Administration's STOP! initiative has spurred the Department of Commerce, the Justice Department, the State Department, the United States Trade Representative, the Department of Homeland Security, and the Food and Drug Administration to elevate the importance of IP-related crime and coordinate previously disparate Federal activities to battle this crime. The Chamber and the more than 285 members of the Coalition Against Counterfeiting and Piracy have aggressively supported the STOP! initiative. This interagency effort has achieved a number of successes, for example, the Department of Justice charged 350 defendants with intellectual property offenses in FY2005, nearly double the number charged in the previous year. Additionally, 2006 saw arrests and indictments resulting from investigations conducted by Immigration and Customs Enforcement increase by 40% over the 2005 level. These successes and the efforts of the STOP! initiative provided a good first step toward a comprehensive national strategy to combat IP crime.

Despite these and other noteworthy achievements under STOP!, the Chamber believes the *Intellectual Property Rights Enforcement Act* is a positive and necessary next step critical to the battle to curtail IP theft domestically as well as globally. This legislation builds upon the achievements of the STOP! initiative by creating a better organized and permanent interagency framework allowing for more efficient collaboration and intelligence sharing, while recognizing the necessity to team with foreign governments committed to making positive strides in battling IP crimes. Enacting this legislation would clearly demonstrate that the U.S. is prepared to handle this category of crime with the seriousness it demands on a permanent basis and with global reach.

IP fraud is an extremely lucrative and low-risk crime that threatens brand owners and creative innovators in all business sectors. We share your view, Mr. Chairman, that counterfeiting and piracy are cash-generating operations for organized criminal networks and terrorist activities.[1] These large criminal gangs possess international manufacturing capabilities and sophisticated distribution channels that rival, and sometimes surpass, those of legitimate businesses. The *Intellectual Property Rights Enforcement Act* elevates such criminal activity to the levels of money laundering and black-market crimes. The Chamber supports this integrated approach in the fight against the theft of intellectual property.

The business community also recognizes the need to leverage its collective resources to partner with the government in battling this scourge. The Chamber has developed a strategic action plan with tangible steps to stop counterfeiting and piracy. Our strategy has three major components:

- First, to educate lawmakers, the media, businesses, innovators and consumers about health, safety and economic dangers that counterfeiters and pirates are imposing on us;
- Second, to enforce the legitimate rights of small companies, manufacturers and retailers to protect the goodwill of their product line and to have safe, reliable distribution channels in the United States;

[1] See Official Testimony of John C. Stedman, Lieutenant, County of Los Angeles Sheriff's Department before the United States Senate Committee on Homeland Security and Governmental Affairs, 25 May 2005. Officer Stedman testified to an investigation that linked the sale of counterfeit cigarettes to Hezbollah fundraising.

- Third, to engage, on a global basis, countries that are not honoring their international trade obligations, crack down on counterfeiters and pirates of intellectual property, and strengthen their borders and shipping controls.

We believe our efforts, when combined with those of business organizations and governments around the globe, will create a safer marketplace for consumers, protect the jobs of American workers and expand our competitiveness internationally.

The *Intellectual Property Rights Enforcement Act* provides a strong foundation for our future collaboration. By creating an expanded and permanent interagency enforcement unit to combat IP theft, a better organized more disciplined force will emerge. This legislation proposes the formation of the Intellectual Property Enforcement Network (IPEN) to oversee coordination among the players I have mentioned and to ensure that a strategic plan to combat IP crimes is effectively implemented. Agencies, while retaining their autonomous nature and continuing to perform their essential functions and duties, would belong to a group of high-level policy makers under a more disciplined structure that will be better prepared to counter highly organized counterfeiting networks. For example, S. 522 would not modify the independent prosecutorial discretion of the Department of Justice or permit other agencies to unduly influence the essential operational duties the DOJ faces daily. IPEN would, however, enhance interagency cooperation and coordination on a broad range of strategically important activities, including intelligence sharing.

The Chamber has actively supported the establishment of regional frameworks to increase cooperation on enforcement of intellectual property rights among our most important trading partners. Here are just a few relevant examples of new enforcement efforts that are being pursued in ways that we believe are complementary to the global Intellectual Property Enforcement Network which you and Senator Voinovich have proposed in S. 522:

- The EU-US Action Strategy for the Enforcement of Intellectual Property Rights includes fifteen bilateral, multilateral and public-private action strategies, many of which involve the sharing of enforcement intelligence with relevant law enforcement authorities;
- The Security and Prosperity Partnership of North America contains similar action items, most notably a goal to "develop a network of enforcement professionals among the governments of Canada, Mexico and the United States to jointly collaborate on enforcement against transnational counterfeiting and piracy." The three governments are currently considering ways of identifying authorized law enforcement officials to conduct domestic criminal investigations and prosecutions of counterfeiters and pirates and enhancing domestic industry/government cooperation and information sharing; and
- At the G8 Leaders Summit in St. Petersburg last year, a comprehensive IP enforcement strategy was announced, which included an agreement ". . . on a plan to establish a formal IP law enforcement infrastructure within the G8 . . . for the pursuit of joint law enforcement operations targeted at IP crimes."

IPEN would provide an excellent platform with which the U.S. private sector can interact to express its concerns and provide intelligence on criminal activity. The business community has a clear role to play by contributing its expertise and resources to assist the government in taking on all aspects of counterfeiting, including those relating to technical assistance and capacity building. Company-financed investigations, which complement the work of law enforcement officials, will have grater leveraged benefits via IPEN as well. Through the promotion of greater private sector collaboration and enhanced channels of communication, we believe IPEN will have a substantially more efficient and increased capacity to obtain and distribute intelligence on Intellectual Property Rights (IPR) crimes simultaneously to all relevant agencies.

Accordingly, we believe the *Intellectual Property Rights Enforcement Act* articulates a clear and compelling need for greater international enforcement cooperation in battling IP crimes. IPR crime adversely affects countries that are our potential trading partners. While all recent Free Trade Agreements contain substantive sections regarding intellectual property rights protection and enforcement, without greater international IPR enforcement activities the investment climate and trading environment in these countries will be hampered. The *Intellectual Property Rights Enforcement Act* would be invaluable in creating a framework that rewards countries for having legal regimes that enforce IP laws, shut down piracy operations, arrest and prosecute those who commit IP crimes, and for having officials with the authority to inspect, seize and destroy counterfeit goods at ports of entry.

On June 14, 2005, I testified before the Senate Subcommittee on Oversight of Government Management, The Federal Workforce and the District of Columbia regarding the STOP! initiative. The Chamber's view then was that STOP! provided an excellent example of interagency collaboration and offered considerable promise in the fight against IP theft. We recommended, however, that provisions of the Government Performance and Results Act, especially those relating to establishing performance indicators and the means for validating actual versus planned achievement of them, are rigorously applied to measure the Administration's progress. Essential to the proper functioning of any interagency program is a requirement for increased oversight, including involving stakeholders in advising the Congress and the administration in the process of developing appropriate metrics for the measurement of success. By establishing performance indicators and the means for validating actual versus planned achievements, and linking them to the resources necessary for success, IPEN should achieve even greater advances in the future. We are pleased to see that S. 522 incorporates these important concepts.

The Chamber understands how important this battle is and stands ready to support the enactment and implementation of this legislation.

Thank you, Chairman Bayh, for focusing on a dangerous and very real threat to our economy, jobs for our citizens, and the holders of intellectual property rights. I appreciate the opportunity to provide testimony and will be happy to respond to any questions you may have.

PREPARED STATEMENT OF TIM DEMARAIS

VICE PRESIDENT, ABRO INDUSTRIES

APRIL 12, 2007

Good afternoon, Mr. Chairman and Members of the Subcommittee:

Thank you for giving me the opportunity to testify regarding one of America's most contentious foreign trade issues—the theft of intellectual property worldwide.

My name is Tim Demarais and I am the Vice President of ABRO Industries which we believe is one of the most unique and innovative international trading companies in the USA today. ABRO Industries traces its corporate roots back to 1939 when our founder began working with manufacturers in the USA selling their products in the international market place. In the 1970's, the "ABRO" brand was developed as part of a long term sales strategy to sell USA automotive products internationally under a single brand name. We initially concentrated on selling our ABRO products in third world markets and there was no place in the world we would not travel to introduce our ABRO brand. We visited such diverse markets as Nigeria, Congo, Pakistan, Lebanon, Saudi Arabia and Sierra Leone just to name a few. We now sell our ABRO products in over 150 countries. We continue to "ABROnize" new products on an annual basis and we now offer over 200 ABRO products to our dedicated ABRO customer base internationally.

In time, our ABRO automotive products became the brand of choice in most global markets but unfortunately today the ABRO name has also become the brand of choice to "counterfeit" by unscrupulous manufacturers worldwide. They say that imitation is the "ultimate form of flattery" but we certainly are not "flattered" that companies are literally stealing millions of dollars of legitimate ABRO sales annually in clear violation of international intellectual property rights. We recognized early that our trademark was one of the most important assets we own and over the past 38 years, we have registered the ABRO trademark in 167 countries. We also own 1,085 registrations in numerous international classifications as we consider intellectual property protection of paramount importance. We have spent hundreds of thousands of dollars registering our ABRO trademark and ironically, we have spent an equal amount of money in defending our ABRO trademark worldwide against importers of counterfeit ABRO products.

Although we can point to many examples of counterfeiters overseas, one foreign company who has taken intellectual property violation to a new level is Hunan Magic of China. We did not know we had a problem with this company until 2001 when we received an e-mail from our Bosnian distributor requesting that he would like to buy ABRO products from our Chinese subsidiary. I knew we did not have a Chinese subsidiary and went to the Canton Trade Fair later that year and was absolutely shocked to see Hunan Magic's booth which had a full display of all of our ABRO products and the company was actively selling ABRO products to many overseas customers visiting the show. The company had literally "stolen" our corporate identity stating they owned the ABRO name.

I immediately contacted the show officials and advised them that this company was illegally selling our ABRO products as we own the ABRO trademark. After I substantiated the fact that we hold the official ABRO trademark registration in China, the show officials agreed to "raid" the booth with me and I was stunned when the General Manager of the Chinese company produced documentation that showed they had the rights to the trademark in China. Later it was discovered this "documentation" was an application and not the actual trademark itself. There was obviously uncertainty at that point at the show until I picked up a sample of our ABRO Epoxy that Hunan Magic was displaying at their booth. Our ABRO Epoxy is a product that I personally developed 20 years ago. At that time, we were not doing $100 Million a year in sales and we were somewhat "low budget" and I had taken a picture of my wife applying epoxy to our bicycle and then put this photo on a blister card. The product has become one of our most popular selling ABRO products with millions of units being sold annually. I immediately asked the General Manager of Hunan Magic who the lady was on his ABRO Epoxy card and he told the show officials it was some "western" model. I reached in my wallet and pulled out a picture of my wife which finally convinced the show authorities we actually owned the trademark and they closed down the booth and Hunan Magic was cited for using our ABRO trademark illegally. We thought the matter was settled until the next trade show when Hunan Magic changed the packaging slightly by deleting the face of my wife and replacing it with a face of an Asian woman but keeping everything else the same including our ABRO name. This story was the subject of a cover story article in *The Wall Street Journal* in November 2004 and we thought the notoriety would convince the Chinese government to do something about controlling this renegade Chinese manufacturer. Unfortunately, their illegal activity has become even more blatant as Hunan Magic is now selling the ABRO brand of products in all of our major markets and their General Manager has publicly stated that "his" ABRO brand is one of the most successful brands they have ever introduced.

Since the Chinese government will not enforce intellectual property laws to protect our ABRO name, we are forced to take legal action in the various markets where these counterfeit products are being sold. For the past several years, we have spent most of our time traveling overseas not actively marketing our ABRO products as we should be but basically working with in-country attorneys and local police and Custom officials to try to seize and destroy these counterfeit products once they enter the foreign country. Last month, I took a business trip to West Africa and in Cameroon successfully led raids against wholesale shops who were selling counterfeit ABRO products. Thousands of cartons of counterfeit ABRO products were seized and will be eventually destroyed. I did hold meetings with the Commercial Attaches at U.S. Embassies in Nigeria, Ghana and Cameroon and was told by all of the Embassy personnel that intellectual property violations are growing rapidly in their respective markets and they wish they had more "teeth" to try to enforce intellectual property laws.

That is why we are thrilled by the new Intellectual Property Rights Enforcement Act that is now being introduced in the Senate by Senator George Voinovich and Senator Bayh. We all know about the War on Terror that is being fought globally but in the business community we look at intellectual property violations as a war on economic terrorism as these companies who are counterfeiting are stealing patents, trademarks, ideas and designs from American companies. We are all aware this illicit activity is costing U.S. companies sales, profits and jobs.

It was encouraging to note that recently the U.S. Government announced it will ask the World Trade Organization to organize meetings to address deficiencies in China's protection of intellectual property rights on books, music, videos and movies. However, there is no mention of many other U.S. products that are being counterfeited including automotive parts and accessories. We hope that the U.S. Government will address deficiencies in all areas of intellectual property violations. When the U.S. agreed to grant China WTO status, China certainly received tremendous trade benefits which is evident by all of the Chinese goods that are sold in the U.S. However, with WTO benefits come WTO obligations and the U.S. Government must insist that the Chinese government live up to these obligations as counterfeit merchandise from China is responsible for the loss of more than 750,000 American jobs.

We feel very passionate about the new Intellectual Property Rights Enforcement Act as we deal with counterfeit issues on a daily basis and this is not just a growing trade problem for ABRO Industries but a problem all USA manufacturers face internationally. The past five years have been most frustrating as ABRO's biggest competitor is not STP, General Electric, Bondo, ITW or some other well known automotive chemical manufacturer but our biggest competitor has become ABRO products from China which is clearly not how our American dream to "ABROnize" the

world was expected to play out. It was mentioned in the *The Wall Street Journal* article in November 2004 that the intellectual property problem we are facing in China is a classic "David vs. Goliath" story. The 23 people at ABRO Industries can only do so much against this economic super power. We only ask that the U.S. Government treat the intellectual property matter more vigorously and pass legislation that will correct these trade injustices and then provide various agencies overseas the effective "muscle" to enforce this new trade legislation.

Thank you for giving me the opportunity to testify today and allow me to vent some of my personal past frustrations on this matter. We continue to fight the battle in the overseas sales trenches every day—but we do need some help from the "generals" back here in Washington. This war on economic terrorism can be won but it is going to take a concentrated effort by everyone here in Washington to force China to comply with their WTO obligations which requires this economic super power to enforce intellectual property laws in their own country.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR BAYH FROM MOISÉS NAÍM

Q.1. On page 255 of your book, *Illicit*, you assert that a smart multilateral approach to combating illicit trade has to be selective. You cite the Financial Action Task Force (FATF), the anti-money laundering initiative, as a good model for multilateral enforcement cooperation. In referencing FATF, you highlight the organization's selectivity as the key to its success. Countries join only if they are able to meet a list of qualifications, and consequently not every country is invited to join. Rather, the key to FATF's success is mutual trust, which can only be generated by establishing standards as part of a "careful, deliberate process."

Regarding intellectual property protection, the United States should continue to actively engage China, India, Brazil, and other sources of counterfeit products through bilateral and multilateral efforts. However, do you agree that an effective international enforcement mechanism must be limited to countries that can meet high standards, and who have demonstrated a commitment to enforcement, even if China, India, and Brazil would not be ready to initially participate in such an arrangement?

A.1. I do agree that the FATF model has much to offer and that its essential structure and approach should be replicated as much as possible in multilateral efforts to combat counterfeiting. I also agree that—as stated in your question—the United States should continue to also actively engage countries that are major producers of counterfeited products. It is possible that the solution lies in creating a sequential process whereby an initial core group of countries [major counterfeit consuming countries] can later be enlarged to include others [major counterfeit producing countries]. It is important to note that many industrialized countries where most companies which are victims of counterfeiting are headquartered are, at the same time, home to the largest consumer population of counterfeited products.

With time, and after consolidating its operations, this initial FATF-like structure can then be enlarged to also include countries that are the sources of these counterfeits. In any case, creating a FATF-like structure to combat counterfeiting is, in my mind, a welcome step. I stand ready to elaborate on these and other points that the Subcommittee may have.