

Opening Statement, Chairman Tom Coburn, M.D.

**Subcommittee on Federal Financial Management,
Government Information, and International Security**

***Ensuring Protection of American Intellectual Property Rights for
American Industries in China***

**Beverly Hills, California
Monday, November 21, 2005**

The Subcommittee on Federal Financial Management, Government Information, and International Security will come to order. Thank you all for being here. Today's Subcommittee field hearing will focus on the massive piracy and counterfeiting of American intellectual property that persists in China.

This field hearing is a follow-up to a previous hearing held by this Subcommittee this past June, where the Subcommittee took a snapshot of the direction of the World Trade Organization (WTO), where we asked the question about how U.S. economic interests are being served and sovereignty protected. One of the key findings at our hearing was the severity of the intellectual property vandalism occurring in China against American entrepreneurs, innovators, artists and consumers.

That's why we wanted to take the next logical step and zoom in on that issue specifically, and what better location than here in the great State of California, where major industries affected by intellectual piracy are located.

Opening Statement, Chairman Tom Coburn, M.D.

Today we will hear firsthand accounts of companies and representatives of various sectors who are experiencing intellectual property theft in China. One of the reasons why I like to hold hearings outside of Washington is that sometimes hearings are filled with a lot of dry, government speak. When something is as close to the pocketbooks of Americans as today's topic is, it's important that we don't obfuscate with inside-the-beltway jargon and mindset. Robbery from huge employers and industries as represented here today should resonate in the ears of the American people – it's their money. Money spent on higher prices for goods and services, jobs lost to foreign competitors and lower profit margins for employers, and everyday investors in these companies whose nest-eggs don't grow as they should. One of the primary points I believe needs to be emphasized in this hearing and in all discussion on this topic is how it is the middle-class American who suffers from these acts of corruption in China. American jobs are at risk when China violates our American intellectual property laws by copying or counterfeiting our American products and then undercutting American in the market by decreasing the market-value costs.

Why Is Protection of Intellectual Rights is so Crucial?

The dictionary defines intellectual property as: *A product of the intellect that has commercial value, including copyrighted property such as*

Opening Statement, Chairman Tom Coburn, M.D.

literary or artistic works, and ideational property, such as patents, appellations of origin, business methods, and industrial processes.

[<http://dictionary.reference.com>]

Protecting the intellectual property of every American citizen is the cornerstone of America's innovation and the success of our nation's economy. American citizens must know that when they invest and dedicate their energy, resources, creativity to providing a product that has the potential to better and benefit our quality of life, their intellectual property rights will be protected by our nation's laws.

And as our nation engages with other nations in trade relations, it is the job of those of us in Washington to ensure that our international commercial partners abide by and protect America's laws on intellectual property rights.

The Founding Fathers rightly identified property rights as one of the fundamental rights upon which all economic and cultural life of a nation must be based. As James Madison stated: "The rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted."

U.S. Government Efforts to Stop China IPR Theft

For some time now, the United States Government and its citizens have been engaged in a struggle to stop China from stealing the intellectual property of American citizens.

As the U.S. Chamber of Commerce stated in Congressional testimony before the House Judiciary Committee in May of this year, “intellectual property rights (IPR) violations in China now severely affect virtually all industries, from consumer and industrial goods – including medicines, autos and auto parts, food and beverages, and cosmetics – to copyright works.”

As a result, on April 29, 2005, the USTR announced that it had placed China on the Special 301 Priority Watch List because of its failure to significantly improve IPR protection.

And last month, the Administration took an even stronger step forward when the U.S. Government filed through the WTO, an official request (Article 63) to have China explain in writing what changes it is making in its legal system to fix the problem of IPR theft, and to also inform the U.S. how many cases of IPR theft have been filed by U.S. companies in China. China has until January (90 days) to provide this information,

Opening Statement, Chairman Tom Coburn, M.D.

which could be helpful to the U.S. in building a case against China in the WTO.

Various American companies have reported over and over the struggles they are facing to have the Chinese government to take the proper legal action to protect their intellectual property rights.

Take for instance the example of the manufacturing company Zippo that produces lighters. As was reported by Assistant Secretary of Commerce William Lash during his press conference on April 14, 2005, it was discovered during a raid in China that 40,000 Zippo lighters had been counterfeited. However, because they valued these lighters at 0.5 to 1.2 RMB (6 to 15 cents), the case "fell under the criminal threshold," for legal action. [usinfo.state.gov]

So, therefore, the Administration is to be commended for taking this step forward at the WTO as such actions communicate to China and the rest of the world that the United States will protect its innovator companies, workers and investors.

After all, this problem is not going away.

Opening Statement, Chairman Tom Coburn, M.D.

The U.S. trade deficit with China has grown significantly in recent years, due largely to a surge in U.S. imports of Chinese goods relative to U.S. exports to China. That deficit rose from \$30 billion in 1994 to \$162 billion in 2004. [Source: U.S. Department of Commerce.]

As my good friend, Ambassador Rob Portman, U.S. Trade Representative, stated in his confirmation hearing testimony, “part of that deficit is because the Chinese do not always play by the rules”.

China is now the sixth largest market for U.S. exports and America's third largest trading partner overall.

The U.S. trade deficit with China is now larger than that of any other U.S. trading partner. If current trends continue, the total U.S. trade deficit with China in 2005 could hit \$213 billion. [Source: U.S. Department of Commerce 2005 projection based on January-August 2005 data.]

USTR testified before Congress this past May that “[U.S.] companies report billions of dollars in lost revenue, irreparable harm to their brands and future sales, all of which ultimately affects U.S. workers who design and produce legitimate products forced to compete against Chinese fakes.”

Opening Statement, Chairman Tom Coburn, M.D.

According to USTR, in 2004, the value of Chinese counterfeits seized before entering U.S. markets rose from \$94 million to \$134 million. And, U.S. Customs and Border Protection estimates that counterfeit merchandise worldwide is responsible for the loss of more than 750,000 American jobs.

The bottom line is – America’s leaders in Washington need to get serious about how to handle this problem and take the necessary steps to put an end to it. American’s jobs are at stake and America’s economy is vulnerable.

So how do we do that?

World Trade Organization (WTO)

Well, as I previously mentioned, one way to address this problem is through the World Trade Organization. The WTO was established to be an international trade organization that would help facilitate coordination and order among international trading partners.

When China joined the WTO a few years ago, they agreed to fully comply with trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement obligations. But China has not kept its promise to Americans.

Opening Statement, Chairman Tom Coburn, M.D.

As I mentioned, the Administration has filed a request to require information back from China on what it is doing to fix the problem. Of course, it will be incumbent on the Administration to make sure that China meets the deadline of 90 days and provide the required information in January when it is due. At that point, the Administration will also have to make the decision based on the information it receives about whether or not the clock has run and the time has come for the United States to file against the Chinese government at the WTO.

There is been much discussion on if and when the U.S. Trade Representative should proceed in moving forward with this action, but to date, the USTR has held back.

History of Trade with China

Let's not forget that when we debated the decision to grant China Permanent Most-Favored Nation status – a prestigious designation that means that we trust you as a good-faith trade partner – some argued that it was asking for trouble to get into financial bed with a communist government that does not recognize individual rights. Individual rights are what property rights are based on. They also, of course, are what human rights are based on and we all know China's deplorable record on that front.

Opening Statement, Chairman Tom Coburn, M.D.

To my mind, it should come as no surprise the communist Chinese regime has violated Americans' rights – given that it does not even recognize its own citizens' rights.

U.S. Needs to Ensure Other Countries Don't Follow Suit

I'm also concerned that the problem we face in China could set a dangerous precedent for our other trading partners. There are other not-so-reliable actors out there watching closely to see how we respond to China. We need to ensure the U.S. is not sending the wrong message to other potential or existing international violators of American intellectual property rights by appearing to be lackadaisical in our response to China. The question of how the U.S. Government needs to respond to China is a major point of discussion today.

Witness Testimony

I want to thank our distinguished guests and witnesses for being here before this congressional hearing. I look forward to hearing their thoughts on this very important issue. All witnesses written full statements will be inserted into the record.

Our first witness is the Honorable Dan Glickman, who serves as Chairman and CEO of the Motion Picture Association. As Chairman

Opening Statement, Chairman Tom Coburn, M.D.

and Chief Executive Officer of MPAA, Mr. Glickman represents the interests of the US filmed entertainment industry before the US government, as well as being the US movie industry's emissary to foreign capitals and foreign movie makers. MPAA's members -- Metro-Goldwyn-Mayer Studios; NBC Universal Studios, Paramount Pictures; Sony Pictures Entertainment; The Walt Disney Company, Twentieth Century Fox Film Corporation; and Warner Brother Entertainment -- employ hundreds of thousands of US workers, entertain millions across the globe, and, unique among US industries, generate a positive balance of trade in virtually every country in the world. Dan Glickman came to the Motion Picture Association of America (MPAA) following a long career of public service. Before taking on leadership of MPAA, Glickman led the Institute of Politics at Harvard University's JFK School of Government. He served with distinction in President Clinton's Cabinet, as Secretary of the Department of Agriculture. And prior this he served eighteen years in the U.S. House of Representatives.

Next we will hear from Nashville songwriter Gary Burr who represents the Recording Industry Association of America.

No stranger to the Nashville scene, Burr has penned numerous hit songs for an impressive roster of country artists, including Wynonna, Collin Raye, Doug Stone, Patty Loveless, and The Oak Ridge Boys.

Opening Statement, Chairman Tom Coburn, M.D.

Burr has been awarded ‘Songwriter of the Year’ on three separate occasions by three different organizations: Billboard, Nashville Songwriter’s Association International, and ASCAP(AS-CAP). He has also received over twenty of ASCAP’s recognition awards for radio play activity, and CDs featuring his songs have sold more than 50 million units world-wide.

Next we will hear from Mr. Jack Sabo who serves as Vice President of Market Data at the New York Board of Trade.

As Vice President – Market Data Services, Jack is responsible for Market Data revenue at the New York Board of Trade (NYBOT). The function entails technology, finance, education, anti-piracy, and marketing. NYBOT is New York’s original futures exchange, where the world trades futures in Coffee, Sugar, Cocoa, Orange Juice, Cotton, and certain financial products.

He currently serves on the Board of the Software and Information Industry Association (“SIIA”), is on the Executive Committee of SIIA’s Financial Information Services Division (“FISD”), where he is Co-Chairman of the Governance Advisory Committee, and Chairman of the Redistribution Advisory Committee.

Opening Statement, Chairman Tom Coburn, M.D.

Next we will hear from Mr. Loren Hillberg, who serves as General Counsel for the software company, Macrovision. Mr. Hillberg handles all corporate legal matters for Macrovision. Prior to joining this company, Mr. Hillberg served as vice president and general counsel of Macromedia. And prior to that Mr. Hillberg served as vice president and general counsel for Micro Focus Group, a UK based provider of enterprise software tools.

Next we will hear from Mr. Timothy Minor who serves as Vice President of Government Relations for Cummins-Allison Corporation. Mr. Minor was gracious enough to fill-in for the CEO of Cummins-Allison, Mr. William Jones, who at the last minute had to cancel his plans to be here today.

Cummins-Allison Corporation is an office equipment and security products manufacturer founded in Chicago in 1887. The founding families were prominent families from Iowa and Indiana respectively at the turn of the Century. Mr. B. F. Cummins, the first President of Cummins-Allison grew up in the State of Iowa. B. F. Cummins eldest brother Albert Baird Cummins served as the Governor of Iowa from 1902 to 1908 and was then elected to the United States Senate and served as a Senator from 1908 to 1926. Senator Cummins served as President Pro Tempore of the Senate during the 66th through the 69th Congress. Albert B. Cummins was a member of the progressive wing of

Opening Statement, Chairman Tom Coburn, M.D.

the Republican Party and thus was closely aligned with Theodore Roosevelt regarding legislative reform of the railroads and other powerful trusts and business interests.

Our next witness is author Ted Fishman. Ted C. Fishman's bestselling book *China, Inc.*, and *How the Rise of the Next Superpower Challenges America and the World*, has helped describe for the world the effects of China's momentous change on the lives and businesses of people everywhere. In addition to its success in America, the book, translated and published in 21 languages, is an international bestseller. In 2006, it will appear in Chinese editions in both The People's Republic and Taiwan. Fishman's has testified before Congressional committees and commissions and consults on China with a wide range of government officials, including some of the nation's most influential office holders. His essays and reports appear in many of the world's most prominent journals, including The New York Times Magazine, Harper's, Esquire, USA Today, GQ, The Times of London, Money, Worth, INC, Business 2.0, German GEO and Chicago Magazine. His commentaries have been featured on Public Radio International's This American Life and American Public Media's Marketplace.

Our final witness is the Honorable Patrick Mulloy Commissioner Patrick A. Mulloy was reappointed to the U.S.-China Economic and Security

Opening Statement, Chairman Tom Coburn, M.D.

Review Commission on March 25, 2003, by Senate Democratic Leader Tom Daschle to a two-year term expiring on December 31, 2006.

Commissioner Mulloy previously served as a member from April 2001 to January 7, 2003.

The United States-China Economic and Security Review Commission (USCC) is a bipartisan Commission established by Congress in 2000 to investigate, analyze and provide recommendations to Congress on the economic and national security implications of the U.S.–China relationship. It recently released just two weeks ago 2005 Annual Report to Congress

Prior to assuming his current responsibilities, Commissioner Mulloy was nominated by President Clinton and confirmed by the U.S. Senate as Assistant Secretary for Market Access and Compliance in the Department of Commerce's International Trade Administration, where he served from 1998 to 2001. In that position, Commissioner Mulloy directed a trade policy unit of over two hundred international trade specialists, which focused worldwide on removing foreign barriers to U.S. exports and on ensuring that foreign countries comply with trade agreements negotiated with the United States. This latter activity involved discussions both in the World Trade Organization (WTO) and with individual governments. He traveled extensively, meeting with

Opening Statement, Chairman Tom Coburn, M.D.

foreign leaders to advance market-opening programs in the European Union, Eastern Europe, China, India, Taiwan, Indonesia, Canada, and Central and South America. He was also appointed by President Clinton to serve as a member of the Commission on Security and Cooperation in Europe.

I want to thank everyone for a very productive dialogue. I want to especially thank the Museum of Television and Radio for their graciousness in holding this event.