

**STATEMENT OF REPRESENTATIVE SANDER LEVIN, COCHAIRMAN
CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA**

**HEARING ON: “WILL CHINA PROTECT INTELLECTUAL PROPERTY?
NEW DEVELOPMENTS IN COUNTERFEITING, PIRACY, AND FORCED TECHNOLOGY TRANSFER”**

SEPTEMBER 22, 2010

The topic of today’s hearing is of the utmost importance to American workers and American business. American workers and businesses lose billions of dollars each year to Chinese intellectual property rights infringement.

The Chinese government has failed to comply with the commitments to protect intellectual property rights that it made as a member of the WTO, and it continues to undermine protections for intellectual property contained in its own laws and regulations. By shining a spotlight on how China’s flagrant abuse of international rules governing intellectual property rights undermines the rule of law, this Commission has an important role to play.

The headline of a recent and detailed Wall Street Journal article says it all: “China Spooks Auto Makers: Foreign Companies Fear New Rules on Electric Cars Will Erode Intellectual Property.” The article notes that “China’s government is considering plans that could force foreign automakers to hand over cutting-edge electric-vehicle technology to Chinese companies in exchange for access to the nation’s huge market.” The article goes on to say that China’s Ministry of Industry and Information Technology is preparing a 10-year plan “that could compel foreign automakers that want to produce electric vehicles in China to share critical technologies by requiring the companies to enter joint ventures in which they are limited to a minority stake.” The article notes how Beijing’s program of so-called “indigenous innovation” discriminates against foreign companies, and is said to be “aimed at gaining control of foreign intellectual property.”

China’s industrial policies have a common thread: they have the purpose or the effect of tilting the playing field to favor Chinese companies and against U.S. companies and workers. That is not a sound or sustainable basis for a mutually beneficial U.S.-China relationship. Nor is it a viable foundation for the development of the rule of law in China.

There is an ever widening chasm between *what we hear* from the Chinese government about the protection of intellectual property in China, and *what we know* to be true about the protection of intellectual property in China.

We *hear* that the legal infrastructure supporting intellectual property rights has improved; we *hear* that courts are becoming more professionalized and skilled at handling complex issues related to intellectual property; we *hear* that Chinese rights holders are turning to Chinese courts to assert their rights more than in the past, and that there has been a measurable increase in the number of civil intellectual property cases in Chinese courts; we *hear* that foreign plaintiffs are winning intellectual property cases at increasing rates.

That is *what we hear*. But this is *what we know*:

We *know* that the American Chamber of Commerce in China surveyed its members this year and found that 63 percent rated intellectual property rights enforcement in China as “ineffective.” We *know* that intellectual property infringement in China is more widespread than before, and that counterfeit exports have increased; we *know* that enforcement of intellectual property judgments is difficult in China, that damages are still inadequate by international standards, and that the Chinese government has not taken sufficient steps to address difficulties in the gathering of evidence; we *know* that high value and volume thresholds must be met in order to initiate criminal prosecution of intellectual property infringement, that administrative fines are too low and civil damages too inadequate and imposed too infrequently to serve as deterrents, and that infringers view them merely as a cost of doing business.

In sum, we *know* that the Chinese government could be doing far more to protect intellectual property rights, but it is not doing so.

We *know* that in 2009, 79 percent of intellectual property-infringing product seizures at the U.S. border were of Chinese origin; we *know* that China’s State-Owned Assets Supervision and Administration Commission has the power to require Chinese state-owned enterprises to certify that all software they use is properly licensed, but that it has not required state-owned enterprises to provide such certification; we *know* that production of counterfeit auto parts experienced a period of significant growth in China in recent years, and that a significant portion of counterfeit auto parts in China are manufactured in areas the Chinese government has designated as auto parts export zones.

We *know* that the Chinese government’s market access barriers lead consumers to the black market. We *know*, for example, that to enforce its policies of censorship, the Chinese government limits the number of foreign films, books, and other media that may be distributed legally in China. We *know* that these limits effectively create markets for pirates. It is bad enough that Chinese government censorship practices violate international human rights standards. But let me state this clearly: Chinese government censorship leads consumers to the black market, and that, in turn, incentivizes the violation of intellectual property rights. The Chinese government often denies the link between human rights and the commercial rule of law. But the link is clear, and the Chinese government itself creates this link. Chinese government censorship leads to the violation of intellectual property rights.

There can be no doubt that China’s flagrant abuse of international rules undermines the rule of law. There is no doubt that widespread intellectual property rights infringement in China continues to affect products, brands, and technologies from a wide range of industries, and imperils the health and safety of both American and Chinese consumers, and imposes billions of dollars of losses yearly on American businesses and workers.

Change is necessary—both in the Chinese government’s behavior, and in the action we take in response. I look forward to our witnesses’ testimony.