

Statement of
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Before A Hearing of the
COMMITTEE ON FINANCE

"TRADE ENFORCEMENT FOR A 21ST CENTURY ECONOMY"

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MR. CHAIRMAN: During my career in government, the US took a high profile WTO action against one of our major trading partners. After a lengthy WTO process, the US won, and the WTO then approved the US taking retaliatory steps to bring the other party into compliance.

"Good," I thought, "our exports will begin flowing again." It was not to be so simple, however. Indeed, for the rest of my time in government, I, and many, many other government trade officials, was occupied with attempting to enforce the WTO decision against the other government. I recall thinking to myself: "If winning a major trade enforcement case causes this many problems, I wonder what it is like to lose a case."

The lesson learned: Negotiations, agreements, and even favorable WTO decisions work only to the extent they are enforced. Enforcement is more than simply winning a decision at the WTO, it is making sure the other government complies. Enforcement is making sure the trade agreements we negotiate are fully and faithfully implemented.

Most policy makers who examine trade policy too frequently neglect enforcement: the hard, hard work of making sure other governments abide by their commitments and that our trade policy and agreements bring the benefits they promise. Enforcement is essential to a successful trade policy, and to the ensuring that US companies and workers take full advantage of the export opportunities available to them in the 21st century economy.

Thank you, Mr. Chairman, for taking up this topic. I appreciate the chance to be here with you and the Committee this morning and share with you the views of the Motion Picture Association of America (MPAA)¹.

¹ The Motion Picture Association of America is the voice and advocate of the American motion picture, home video, and television industries. Its members include: Buena Vista Pictures Distribution; Paramount Pictures; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLLP; and Warner Bros. Entertainment Inc.

Effective trade enforcement is specifically vital to the well being of the US motion picture industry. The industry earns over one-half of its annual revenues outside the US. Our most recent analysis indicates that last year, what we call all media revenues – that is revenue from movies released in theaters, on home entertainment products like DVDs, and filmed entertainment shown on television – was actually higher outside the US than domestically.

The industry is an export success story few other industries can match. It annually generates a positive balance of trade – bringing dollars back home and creating American jobs for American workers from those exports. It generates a positive balance of trade in every country in which it does business.

That accomplishment has not come easily. The industry offers an attractive product that audiences worldwide want, the primary reason for the US industry's overseas success. Another part is the work that we have done, on our own, with the US government, with other governments, and with our allies in the copyright community to make sure that these overseas markets are open to our products and that our products are protected through adequate policies and legal systems.

We have made great strides, with your help and with the help of the trade negotiators in the Administration. In some territories we still need to do more work to get the right kind of laws and regulations in place.

We have increasingly turned our attention to the subject of this hearing. We are increasingly working to urge the US government to focus on enforcement and to work with foreign governments on effective enforcement of their own laws. We are working increasingly to ensure that foreign government are in compliance with the obligations they have made to the US government and to other governments through such bodies as the World Trade Organization (WTO).

As you begin examining options for improvement trade enforcement, I have five themes and recommendations for the Committee's consideration: One, the critical role of the free trade agenda; two, ensuring adequate resources for overseas training and education; three, ensuring that the US agencies charged with negotiating and enforcing trade agreements have sufficient resources; four, improving our laws to require foreign governments to improve their compliance, especially if they are the beneficiaries of US preferential treatment; and five, the value of increased congressional oversight.

THE FREE TRADE AGENDA

The free trade agenda is critically important to the motion picture industry, specifically the Office of the US Trade Representative's (USTR) negotiations on free trade agreements (FTA). I recognize the several controversial issues surrounding these proposals – labor issues, the environment, and others. As you debate those matters, let me remind you that the improvements in intellectual property rights enforcement that these agreements have required of our FTA partners are vital to the industry's interests.

In virtually all of these FTAs, we have reached agreements with our partners calling for intellectual property protections that exceed minimal requirements of the WTO's Trade Related Aspects of Intellectual Property Agreement (TRIPS). Over time,

moreover, USTR has enhanced its negotiating request on intellectual property protections, the negotiating thus further improving the level of protections. For example, the recently concluded Korean FTA will provide the motion picture industry, and other copyright industries, a higher level of protection than previous FTAs. It includes two side letters on intellectual property rights enforcement, one of which involves on-line enforcement. The agreement also includes, for the first time, the requirement that the Korean government adopt an anti-camcording law, which is of particular interest to us.

As a result of these provisions, as well as the improvements the agreement makes in the access we can get to the Korean entertainment market, we support it. We are eager to work with you and your colleagues to see it implemented so that we can take advantage of those improvements.

We view the FTA process as a series of building blocks, at each stage elevating not only the level of intellectual property rights laws but also the commitments of those governments to enforce the requirements of the laws. We believe this is especially important as we work on to see the Doha Round of multilateral trade negotiations come to a successful conclusion.

OVERSEAS TRAINING AND TECHNICAL ASSISTANCE

Unless foreign officials know how to enforce trade agreements, particularly in the complex area of intellectual property rights, the agreements cannot realize their full potential. Consequently, we invest heavily, on our own, in training and education programs around the world with law enforcement officials and with foreign judges. Even in countries where we face some of our most daunting challenges, we are actively engaged in reaching out to host governments to provide technical assistance.

We are very supportive of the training and education resources that the State Department and the Commerce Department invest in these programs, as well. We encourage you to continue to support those programs.

We have been working with a broad coalition of other business groups on a far-reaching package of intellectual property rights enforcement measures that, through the auspices of the Chamber of Commerce, is slated to be unveiled later this week. Much of it has to do with domestic and border enforcement, but a part of it address this specific point: overseas training.

In particular, we have had very good results working with the intellectual property attaches the Commerce Department has posted overseas, most notably in China. The package that will be unveiled later this week will call for expanding that program to more posts and to elevate the coordinating role those officials have within the embassies to enforcement in-country. In addition, this package will propose linking the allocation of training funds for foreign officials with the priorities indicated in the annual special 301 process to ensure that the funds go to the most critical countries.

FULLY FUNDING THE TRADE ENFORCERS

Effective trade enforcement rests upon ensuring that the "enforcers" have sufficient resources and that the Executive Branch has enough "enforcers." Put another way, I urge you to ensure that the officials on the front line, specifically in USTR and at the

Commerce Department have the resources they need to tackle the many, many enforcement challenges they face.

Most of us view USTR as the trade negotiators; they are. However, much of what they do is enforcement – working with foreign governments and US industries to ensure that the trade negotiations they have concluded are in fact enforced. Indeed, my experience is that USTR easily devotes a considerable share of its resources to what we would probably call enforcement matters.

In an increasingly complex global economy, with increasingly complex trade agreements, I cannot stress enough the importance of ensuring that we have sufficient trade enforcement officials. In many cases, the implementation of trade agreements is as complex and time-consuming as actually negotiating them, and that process is clearly as vital to success as the negotiations themselves.

IMPROVING OUR TRADE ENFORCEMENT LAWS

In addition to training, education, and implementation of trade agreements, another important aspect of effective enforcement is leveraging existing programs. I mentioned previously the value of tying training programs to priority countries identified in the special 301 process. Inasmuch as that the 301 process serves as the overall roadmap for the intellectual property rights agenda each year, we believe it can guide our work with governments that benefit from our trade preference programs.

Specifically, we recommend that Congress require that governments' whose economies benefit from the generalized system of preference program (GSP) and which are identified on the USTR 301 priority list develop action plans to address the piracy problems in their countries. In addition, a country's eligibility for future GSP benefits would depend on its willingness to implement such action plans.

A little more than a year ago, the motion picture industry, and other copyright industries, worked with USTR to develop an action plan that USTR subsequently presented to Brazil. We saw notable improvements, and believe it is a pattern that could be expanded to other GSP beneficiaries, provided that the program were so amended.

In addition, we would recommend that GSP beneficiaries on the special 301 list also be priority countries for the allocation of trade capacity building assistance to improve their ability to address piracy.

CONGRESSIONAL OVERSIGHT

From time to time, for our own planning purposes, we evaluate the intellectual property rights landscape in foreign countries. One of the key factors is enforcement, specifically the political will of governments to take enforcement actions. In many cases, all other ingredients may be in place, but the governments lack the political will to take meaningful enforcement actions.

In many cases, that is, frankly, the case with the US government. Bilateral relations involve many components, trade among the more important, but not always the most important. Within that subset, intellectual property rights compete against other factors that US officials must take into account. I understand that reality.

At the same time, as the US economy moves from a manufacturing economy to a service economy to an intellectual property economy, enforcement of our trade agreements to protect intellectual property is, I submit, vital to our national economy prosperity. Intellectual property and innovation is the competitive edge the US has in the global economy. Enforcing our trade agreements to protect that advantage and enhance the ability of US industries that rely on intellectual property must also be a likewise top national priority.

That will require broadening our efforts to improve foreign legal systems and their application, training foreign officials, ensuring that our officials have resources, and enhancing our existing laws. It will also require ensuring that our government has the political will to enforce these rights.

In my view, congressional oversight can be extremely valuable. We need to hold US officials charged with enforcing our trade agreements accountable for their decisions, and few things are as important as congressional oversight to make sure that the Executive Branch is working to enforce the policies and programs that you authorize and direct, in the manner you expect.

The US motion picture industry depends extensively on the overseas market, and thus the effective enforcement of trade agreements designed to protect our product in those markets. Already this summer, we have seen *Spider-Man 3*, *Shrek the 3rd*, and *Pirates of the Caribbean: At World's End* do incredibly well in markets outside the US. The season promises more blockbusters – *Harry Potter*, *Evan Almighty*, and *The Simpsons* – that I am confident will be just as successful outside the US as they are here. In part, their success and the returns the industry generates from these titles and the other movies we export depend on ensuring that our trade policies – in particular the policies designed to protect intellectual property – are fully enforced.

As I said at the outset, trade negotiation and broad policy usually gets the lion's share of public attention within the trade arena. Effective enforcement of those agreements often involves work outside the public spotlight, but it is essential to the agreements' success.

I urge you to make sure the officials have adequate resources to accomplish this work, that we have resources to work with foreign officials, and that you consider the other recommendations I have made to ensure that our trade agenda realizes the promise of the expanding global market.

Thank you. I welcome your questions.

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