



March 13, 2008 Testimony before Senate Finance Committee  
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Chairman Baucus, Senator Grassley, and members of the Finance Committee, on behalf of Ford Motor Company I want to thank you for the opportunity to testify today regarding the crucial role U.S. Customs and Border Protection has in protecting America's citizens and its economy.

I am an Intellectual Property Attorney for Ford Global Technologies, a wholly owned subsidiary of Ford Motor Company responsible for managing all of the intellectual property rights for Ford and its subsidiaries around the world. Because Ford itself is a global technology company, we are keenly aware of the important role trade and the worldwide movement of products, technology, and ideas can play – if administered properly.

Customs is a vital partner in this administration and we have worked long and successfully with them to do so. However, the threat our industry, our country, and our economy face goes well beyond just the process of protection. It goes to what we are inadequately protecting today: America's intellectual property and thereby, its citizens, its jobs, and its economic future.

Global counterfeiting and piracy is already a serious problem and growing. It is illegal, it is often dangerous to consumers, and it is always expensive to those whose products are effectively "stolen." Yet today's counterfeit criminals enjoy greater returns with less risk.

U.S. industry invests 100's of billions of dollars in research, design, testing, production, and marketing of products. This is money wasted if overseas operators are allowed to turn intellectual property into intellectual piracy.

Estimates of intellectual piracy's global costs range from \$150 billion to \$750 billion annually. The IACC (International Anti-Counterfeiting Coalition) estimates approximately 5-7% of world trade is counterfeit goods. MEMA (Motor Equipment Manufacturer's Association) estimates that counterfeit goods account for \$12 billion annually in the global automotive sector and this illicit trade reduces as many as 200,000 automotive jobs.

The American consumer expects automobile manufacturers will do everything they can to ensure their safety through rigorous engineering, testing, and certifying their

products. But the benefits of these efforts can be compromised when the brakes, steering or some other system in the vehicle fails due to a counterfeit part.

Counterfeiters are eager to develop replacement parts that look similar – if not identical – to the original equipment, authorized part. Today's technologies allow copied parts to visually deceive consumers even though they do not meet original design, engineering, or safety standards.

For example, we have submitted counterfeit parts for product testing by the respective supplier of the original authentic part. In a recent evaluation of a suspension component, the test engineer's summary states:

*"The counterfeit parts were found to have similar dimensions as the originals and numerous trademark identifications (i.e. part number, logo, assembly, etc). However, the materials, machining, and sealing systems are of low quality and are not recommended for use on any vehicle."*

Ford Motor Company takes the issue seriously. We deploy resources globally to protect our consumers. Our strategic efforts focus on several fundamental areas:

- IP enforcement – trademarks, copyrights and patents;
- Training – including our own employees, Customs/law enforcement, etc.
- Monitoring internet activities;
- Controlling security – packaging and the distribution/supplier chain; and
- Ongoing communications with customers, industry groups, and governmental bodies around the world.

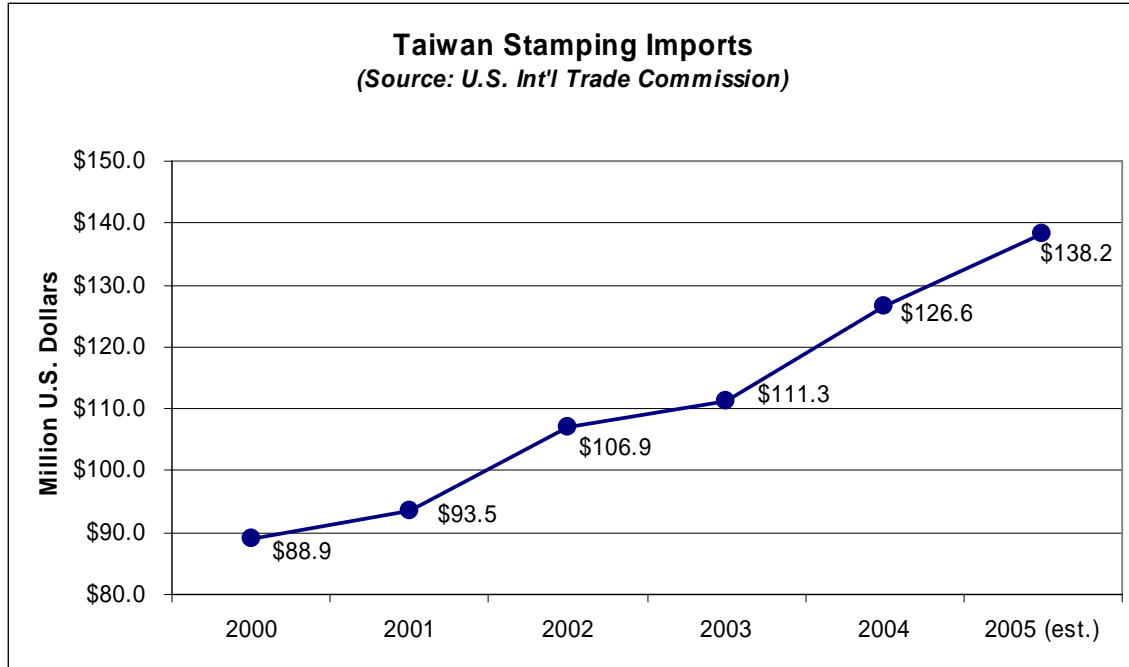
We have established a global network of investigators and we work with industry groups such as the U.S. Chamber of Commerce, Coalition Against Counterfeiting and Piracy (CACP), IACC, and MEMA, to name just a few of our partners in this effort.

In addition, Ford along with our industry partners, works with government and law enforcement agencies around the world, beginning with the United States Customs and Border Protection and the United States Patent and Trademark Office (USPTO) here at home, to pinpoint counterfeiters and put them out of business.

We have learned some important lessons in the area of intellectual property enforcement.

Intellectual property is the very foundation of a competitive business. It helps define a company's brand integrity, its products, and its critical technologies. Effectively leveraging intellectual property not only encourages research & development spending, it is the fuel for the R&D engine, and it is something every shareholder demands in today's economy.

It is up to each company and in the interest of every nation to ensure their intellectual property is protected and respected around the world. Today's technology combined with the internet and the speed of commerce has changed the playing field. An example of a growing problem for us is illustrated by the following chart.



This chart demonstrates incredible growth from just one country in copying sheet metal parts. Today's technology makes it possible for a company anywhere in the world to rapidly "photocopy" an existing part.

These copy-parts are then sold as cheap alternatives to original parts. Consumers, especially subsequent consumers, have no way of seeing these parts are fakes.

In addition to the consumer and brand implications, as in counterfeiting generally, these are highly profitable sales for those in the counterfeiting business. There are enormous cost savings when there is no product development or marketing cost.

Ford alone estimates lost sales of \$400 million per year due to these copy parts. If that is 15% of the market, lost industry sales must exceed \$2 billion.

Ford decided to do some thing in response to this growing problem. Ford sought and obtained design patents from the USPTO for ornamental and distinctive exterior parts of our vehicles. Next, after lengthy and expensive proceedings in the International Trade Commission (ITC), we obtained an exclusion order. This order prohibits the importation of copies of seven parts of our popular F150 pickup truck. For Ford, this victory demonstrates the importance of applying specific intellectual property (design patents) to solve a specific problem (automotive design piracy).

While welcome, this victory also clearly demonstrates problems preventing us from effectively combating design piracy.

First, 3 of the 10 patents were held invalid due to one of the many technicalities a design patent owner must face during enforcement proceedings. These design patent technicalities result in successful enforcement in fewer than 35% of design patent cases tried. Unfortunately, this success rate encourages copy-catters, while discouraging original manufacturers rightfully seeking to protect themselves.

Second, a major loophole exists in the timing involved in stopping design piracy with design patents. Using the fastest process available to us, there is at least a 30 month window between product introduction and enforcement. Using this window, design pirates fill their U.S. warehouses with imported copy parts sufficient to meet demand for years to come. Prior to the issuance of an exclusion order, Customs cannot seize duplicate parts, despite our patents. Once these parts are inside our borders, even when we beat the unfavorable odds, an ITC ruling provides no remedy against parts already on shore.

For our victory to have real meaning, there needs to be swift and effective enforcement of the exclusion order. Therefore, we partner with Customs to enforce this victory by supporting Customs in their efforts to stop these shipments from entering the United States. Customs' efforts are a critical element in ensuring that U.S. consumers and our customers are supplied with only parts that meet Ford's exacting safety and quality standards. With additional funding and resources, Customs could do much more.

Ideally, a simpler and more efficient mechanism for stopping design piracy would exist. A simple registration scheme for designs would prevent exact copying of our ornamental and distinctive exterior parts. That design should go to Customs shortly after a new product launches. Customs would then enforce the registration, much the same as they enforce our design patents under an exclusion order today. Such an approach would be consistent with the underlying U.S. intellectual property policy goals and mirror the intellectual property rights protection provided in Brazil, France, Germany, Japan, and many other countries.

At the least we should greatly reduce the two-and-a-half year loophole in the current system before we can obtain an exclusion order. Such a delay is effectively a denial of rights and should be eliminated.

Finally, Ford also believes that Customs should be encouraged to be more effective and efficient with its existing programs and initiatives such as Customs-Trade Partnership Against Terrorism (C-TPAT). Ford is proud to have been one of the original 7 charter members of C-TPAT and we recently completed our first revalidation. These security measures can be applied beyond interdicting terrorists and terrorist weapons. A secure supply chain also helps secure the United States against counterfeit goods. We believe that Customs should better leverage its resources to all aspects of its mission, by using programs like C-TPAT to segregate known secure and responsible shippers and

importers, thus freeing Customs to focus on higher risk and less known shippers and importers. Leveraging proven programs such as C-TPAT would not only increase security, but improve Customs' performance in other areas, such as combating counterfeiting.

I should mention that Ford is also concerned that other Customs initiatives, particularly the recently announced Importer Security Filing rule (commonly known as "10+2"), which threaten to dilute Customs' focus and effectiveness on its priority missions. Customs should be challenged to make Congress and American citizens confident and comfortable that all of its efforts and initiatives have a reasonable chance of actually achieving the stated goals of increased border and supply chain security or other mission priorities such as anti-counterfeiting.

In conclusion, while we do not know the full magnitude of these problems, we do know the problem exists and is getting worse. The vehicle manufacturing business is an intensely competitive business. This competition is beneficial and consumers are getting the safest, highest quality vehicles ever produced. However these benefits are undercut, and will eventually be destroyed, by unfair competition from counterfeiters and design pirates.

Ford Motor Company is grateful for this opportunity to share our views on how to make our industry more competitive. There is a real and present threat to the U.S. consumer, industry, and economy. We must prevent this if we are to remain secure in our products and competitive as a country. Customs is the first line of defense against this unfair competition – the importing of intellectual piracy and the exporting of U.S. jobs and know-how. We must work collectively and cooperatively to harness every applicable resource to stop the threat to consumers and level the playing field for workers and industry.

Thank you.