



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Tuesday, Sept. 21, 2004

Grassley Urges Iowa Businesses to Help Enforcement of Intellectual Property Rights in China

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, today announced his support for the Bush Administration’s out-of-cycle review of China’s intellectual property rights commitments and encouraged Iowa companies that may be experiencing intellectual property rights problems in China to participate.

The Administration is soliciting comments from businesses as part of an effort to measure the progress of China’s commitments to significantly reduce intellectual property rights infringements. The Administration negotiated specific commitments from China during the U.S.-China Joint Commission on Commerce and Trade in April.

“This out-of-cycle review of China’s intellectual property rights commitments is an important element of the Administration’s efforts to ensure that China is abiding by its international trade commitments,” Grassley said. “I’m calling on all companies doing business in China to provide data on the prevalence of intellectual property rights infringement in China and provide examples of specific individual cases in which these rights have or have not been respected.

“Strong enforcement of our international trade agreements is an important priority for President Bush and for me. To succeed, we need to work in partnership with the business community in Iowa and across the nation. I hope Iowa companies that have information about China’s intellectual property rights enforcement efforts will help us in this important endeavor.”

The “Special 301” provisions of the Trade Act of 1974 require the United States Trade Representative to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. The Special 301 process concludes by May 1 of each year, while out-of-cycle reviews can be conducted at any time.

Details on how to participate follow.

The Bush Administration’s Out-of-Cycle Review Data Request Information Sheet

Dear interested member of industry:

Improving protection for intellectual property in China is a top priority for this Administration. To that end, we negotiated specific commitments from China during the April JCCT that would result in significant reductions in infringement. We seek your help to accurately measure progress.

As announced in USTR's 2004 Special 301 Report, we will be conducting an out-of-cycle review (OCR) in early 2005 to evaluate China's implementation of the commitments announced at the Joint Commission on Commerce and Trade meeting on April 7, and whether China's actions are achieving results. As U.S. IPR leaders and participants in China's market, your direct input is critical to our ability to thoroughly evaluate China's progress.

In the coming months, we will publish in the *Federal Register* a formal announcement commencing the OCR. To effectively evaluate China's progress and to protect U.S. IPR interests in China, we need industry to provide data on the prevalence of IPR infringement in China and provide examples of specific individual cases where IPRs in China have or have not been respected. Given the scale and nature of the information we need and the importance of this issue, data regarding both successes and failures from January 2002 and onward is crucial to identifying short- and long-term progress in China, and any additional shortcomings in China's IPR regime. It is up to each industry and company to decide how to respond. One possible approach is for industry groups to provide data on prevalence of IPR infringement, while individual companies focus on specific individual cases of IPR infringement.

The following information will be particularly useful for our evaluation process:

- detailed retail and consumer market surveys (for example, calculating on a monthly basis the rates of pirated product available through various retail channels in major cities across China);
- detailed reports on major centers around China dealing in or producing infringing product and the success or failure of Chinese authorities in eliminating those centers;
- detailed reports on particular geographic areas or sectors where China's enforcement of IPRs is notable for either its weakness or its strength;
- industry data on exports of infringing products from China to the United States and other international markets
- information on sources and supporters of the production of infringing products (*e.g.*, whether infringing production is individual, corporate, state-supported, supported by organized crime or official corruption, etc., and whether such support is local, provincial, regional or national in scope);
- trade estimates showing any effect on trade of IPR infringing goods;
- statistical data, if appropriate, aggregated from the experiences of members of right holder organizations, on the actions undertaken and results produced by China's authorities responsible for enforcement of specific IPRs of concern to industry, including data based on right holder experience with
- type and amount of penalties (*e.g.*, fines, license suspensions, imprisonments) and seizures of infringing goods and implements used to make them;
- frequency and type of all relevant forms of enforcement action, such as initiation of administrative

action, raids, referrals for criminal prosecution, imposition of penalties, and other relevant enforcement actions; and

-- data on deterrence or lack thereof, *e.g.*, recidivism; and

– dossiers prepared by individual right holders on significant enforcement cases, preferably in the format specified by the attached template, together with other information that right holders consider to be relevant.

In addition to this factual information, we encourage industry to provide its detailed evaluation of specific strengths and weaknesses of China's legal regimes for enforcement of IPRs in light of relevant international standards and U.S.-China bilateral commitments.

The attached template includes guidance for submission of information on specific cases, and also provides a means for marking information that respondents may wish to designate as "business confidential," when appropriate. Any other submitted information that should remain confidential should be certified and marked as indicated in the template. This template will soon be made available in a word-processing format on the USTR website.

Respondents need not wait until commencement of the OCR process to share information with USTR. In fact, we would like to receive pertinent information as soon as it becomes available, so that we can begin to develop a sense of China's progress in these areas. We would welcome initial responses by November 1, 2004. My staff and I would be pleased to discuss any questions regarding the type of information we need, so please do not hesitate to contact us. We will also hold a formal meeting in the coming weeks to discuss the OCR process in greater detail.

Preparing for the upcoming OCR process will require significant effort and commitment of resources for both industry and the government. Your assistance in providing information regarding your business transactions and experiences with China will be invaluable to our efforts. In anticipation of your cooperation, we thank you for your time and effort in assisting us.

The electronic mail address for submissions is FR0446@ustr.gov. Please note that industry submissions, while critical, are strictly voluntary. For further information, please contact Victoria Espinel, Deputy Assistant U.S. Trade Representative for Intellectual Property, at (202) 395-6864, Angela Davis, Director of China Affairs, at (202) 395-3900, or Stan McCoy, Assistant General Counsel, at (202) 395-3581.

Sincerely,

Ambassador Josette S. Shiner