



## Statement of the U.S. Chamber of Commerce

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**ON: Counterfeits and Their Impact on Consumer Safety**

**TO: U.S. Senate Committee on the Judiciary**

**BY: U.S. Chamber of Commerce's Global Intellectual  
Property Center**

**DATE: April 27, 2016**

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**1615 H Street NW | Washington, DC | 20062**

The Chamber's mission is to advance human progress through an economic,  
political and social system based on individual freedom,  
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

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**Testimony of David Hirschmann  
President and CEO, Global Intellectual Property Center of the U.S. Chamber  
of Commerce**

**Before the U.S. Senate Committee on the Judiciary**

**Wednesday, April 27, 2016**

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**CHAIRMAN GRASSLEY, RANKING MEMBER LEAHY, AND MEMBERS  
OF THE JUDICIARY COMMITTEE:**

The Global Intellectual Property Center (“GIPC”) was established in 2007 as an affiliate of the U.S. Chamber of Commerce. Today, the GIPC is leading a worldwide effort to champion intellectual property rights as vital to creating jobs, saving lives, advancing global economic growth, and generating breakthrough solutions to global challenges.

The U.S. Chamber of Commerce (the “Chamber”), the world’s largest business federation representing the interests of more than three million businesses of all sizes, sectors and regions, as well as state and local chambers and industry associations, is dedicated to promoting, protecting and defending America’s free enterprise system. The Chamber appreciates the opportunity to submit this testimony to the Committee as you examine the impact of counterfeits.

The GIPC and the Chamber advocate for the right rules to protect intellectual property on behalf of the broad business community. We will emphasize three main issues related to counterfeits: the devastating impact of counterfeits to consumers, the growing scale and scope of the problem, and the need for Congress to support and appropriate additional resources to combat counterfeits. The Chamber firmly believes that businesses and consumers benefit from stronger enforcement resources dedicated to IP protection. The GIPC appreciates the attention that you are devoting to this topic.

**1. Counterfeits Harm Consumers**

Naturally, when discussing counterfeits, the health and safety of consumers are paramount. In this month alone, counterfeit medicines caused as many as ten deaths due to overdoses in California. Patients believed that they were taking legitimate Norco, a generic version of Vicodin. Really—they were taking fentanyl—a painkiller that

is up to 100 times stronger than morphine and can be lethal in very small doses. This is one small example of the consequences of counterfeit pharmaceuticals entering the illegitimate supply chain; we know it occurs with lifesaving medicines as well. From fake Avastin, the injectable cancer medicine unwittingly purchased by some medical practices, to diabetes medicine without active ingredient, counterfeit medicines pose a serious threat to the consumer. Unsafe medicines purchased on the Internet from illegitimate sources—harm patients—and those ten patients in California are, tragically, just the tip of the iceberg.

It's not just medicine. There are phony spark plugs or dangerous airbags that explode in cars. Federal safety regulators have revealed that tens of thousands of American motorists may be operating vehicles with counterfeit parts or a dangerous airbag.<sup>1</sup>

Counterfeit circuit boards have found themselves into our military supply chain. The Defense Research Projects Agency, (“DARPA”), has taken on a new quality control in military procurement. The military's research agency is developing a device to detect used and counterfeit electronic components in the Pentagon's supply chain that may put soldier's lives at risk.

- In 2011, the Senate Armed Services Committee, released the results of an investigation in which investigators found that for 100 counterfeit parts, 70 percent of them originated in China. Others were traced to the U.K. and Canada.<sup>2</sup>
- In 2012, there were 1,800 cases of suspect counterfeit electronic parts in the defense supply chain, with the total number of suspect parts exceeding one million. A senior Naval Air Systems official estimated “that as many as 15 percent of all spare and replacement microchips the Pentagon buys are counterfeit.”

Knock-off toys can carry dangerous chemicals often including lead. These toxic substances put young children at risk.<sup>3</sup> Often today's consumers are unknowingly paying top dollar for fakes. If even one toy placed in your child's hands is counterfeit and can threaten your child's safety, it is one too many. Thankfully, the Office of Immigration and Customs Enforcement (“ICE”) has seized thousands of fake or

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<sup>1</sup> <http://www.thedetroitbureau.com/2012/10/how-to-spot-counterfeit-auto-parts/>

<sup>2</sup> <http://gao.gov/assets/590/588736.pdf>

<sup>3</sup> *Two Individuals Plead Guilty to Importing and Selling Hazardous and Counterfeit Toys in New York*, <https://www.justice.gov/opa/pr/two-individuals-plead-guilty-importing-and-selling-hazardous-and-counterfeit-toys-new-york>

illegitimate toys that will not end up in the hands of a child. But, they can't seize them all and it takes only one to cause harm.

No industry is spared. Household goods, luxury handbags, jewelry, and watches, athletic shoes and equipment, sports jerseys and apparel—counterfeiting is prevalent across nearly every market segment—even baby formula.

## **2. What are counterfeit goods?**

A counterfeit is any product that does not contain what the packaging indicates. This applies to branding, chemical content, freshness and potency.<sup>4</sup> Another widely accepted definition includes the term “counterfeit” as tangible goods that infringe trademarks, design rights or patents; and “pirated” to describe tangible goods that infringe copyright. References in this submission do not include intangible infringements, such as online piracy.

Counterfeiting is a tremendous global threat. Counterfeit products also result in detrimental effects on economies due to decreased innovation, loss of revenue and taxation, and higher unemployment rate. The reach of counterfeiting is expansive. Counterfeits are found in nearly every industry sector and every product line from mainstream household items to luxury goods.

The impact of counterfeits is real to consumers, but also to our global economy. Intellectual property (IP) is a key engine of growth and economic development in the global economy. Intellectual property – trademarks, patents, copyrights, and trade secrets are the foundation of a significant part of the American economy.

IP-intensive industries create real jobs for Americans. IP-intensive industries contribute over \$5 trillion dollars and over 40 million jobs.<sup>5</sup> Intellectual property generates 34% of U.S. GDP, two thirds of U.S. exports, and 5.8 trillion in U.S. output. Counterfeit goods threaten our economic prosperity:

What is the scope of the problem? The OECD released new statistics nearly ten years in the making last week. They cite that the total value of imported fake goods worldwide is \$461 billion.<sup>6</sup>

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<sup>4</sup> UNODC, [https://www.unodc.org/documents/data-and-analysis/tocta/8.Counterfeit\\_products.pdf](https://www.unodc.org/documents/data-and-analysis/tocta/8.Counterfeit_products.pdf)

<sup>5</sup> <http://2010-2014.commerce.gov/blog/2012/04/11/intellectual-property-intensive-industries-contribute-5-trillion-40-million-jobs-us->

<sup>6</sup> <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>

The GIPC commissioned a study that offers deeper, complementary analysis. We've found 86% of all fake products come from China and Hong Kong. The next largest source of fake products totaled less than one percent. The GIPC knows the Chinese government is also focused on its commitment to the health and safety of its citizens; for example in March, Chinese officials detained almost 40 people in connection with the sale and manufacture of fake vaccines.<sup>7</sup> However, more must be done to protect consumers around the world.

Counterfeit products follow global trends. Thus, additional resources are necessary to continue to combat the problem. The GIPC has seen incredible changes and disruption to the old brick-and-mortar days of shopping.

With the powerful rise of online shopping and the “new normal” of e-commerce delivery platforms, enforcing against counterfeits is a much more challenging endeavor. For example, as of February 2016, small parcel shipments of counterfeits are now seized ten times more than large shipping containers, a major reversal of the challenges only a few years ago. This means the volume of parcels containing counterfeits is much higher, and when one is caught, the amount of counterfeit products seized is much smaller. This means that more resources are needed to do the job.

### **3. Counterfeiting is a Massive and Growing Problem**

The OECD released new statistics nearly ten years in the making last week. They calculate that the total value of imported fake goods worldwide is \$461 billion.<sup>8</sup>

In this light, the Global IP Center is unveiling a new study, *Measuring the Magnitude of Global Counterfeiting*, that offers two new data points:

1. A deep analysis of trade-related physical counterfeiting;
2. A breakdown of economies' share of the global rate of physical counterfeiting (in both percentage and U.S. dollar terms) for a wide number of economies based on new modeling of economies' propensity for counterfeiting, including factors such as IP protection and estimated rates of corruption rates.

The updated metric uses three equally-weighted indicators: the local IP enforcement level, including robust legal frameworks and effective border measures, the local rate of corruption based on Transparency International's Global Corruption

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<sup>7</sup> <http://www.techtimes.com/articles/143447/20160323/china-arrests-37-for-selling-fake-vaccines.htm>

<sup>8</sup> <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>

Barometer, and the country's ranking on OECD's GTRIC-e measure newly updated just a week ago.

As part of the U.S. Chamber's 2016 International IP Index, we offer an empirical assessment of the strengths and weaknesses of 38 developmentally and geographically diverse countries representing 85% of global gross domestic product.

This cross-disciplinary, empirical assessment of intellectual property protection and enforcement in 38 economies provides a snapshot of what countries are doing well and what they can be doing better.

This year, as part of the Chamber's Index, we have created this complimentary study to offer this new proprietary Global Measure of Physical Counterfeiting, which provides an updated assessment of the international counterfeiting landscape.

The report created a unique metric which estimates the share of each of the 38 examined economies in global counterfeit trade, in a way which is specific to each economy. This was achieved using three equally-weighted indicators:

1. The local IP enforcement level, reflecting the scores on relevant indicators in the IP Index which together capture the total IP enforcement environment (including border measures) in Index economies;
2. The local rate of corruption, on the presumption that a strong relationship exists between corruption and propensity to counterfeiting;
3. The likelihood of importing a counterfeit product from a given economy country's ranking on the original OECD GTRIC-e measure.

When it comes to precise seizure data, the first and most basic challenge is that actual seizures of counterfeit goods reveal only a small percentage of the overall levels of the relevant illicit activity. In this sense seizure statistics only provide a 'tip of the iceberg' sense of true levels of counterfeiting.

Our unique metric assigns each of the 38 economies a percentage, which is translated into a dollar figure, representing the value of counterfeit products that are being locally produced in the economy and exported overseas.

#### **4. The Threat of Counterfeiting is Global**

The U.S. Chamber of Commerce's *Measuring the Magnitude of Global Counterfeiting* uses a baseline of global counterfeit trade as 2.5% of world trade which was the baseline estimated by the OECD in their 2016 study. The OECD recently released

updated statistics measuring global counterfeiting trade at nearly a quarter of a trillion dollars.

Looking at the extent of trade-related physical counterfeiting globally from the perspective of the scale of world trade, the share of physical counterfeiting to world trade is 2.5%.

## **5. Additional Resources Should be Allocated**

There is a bright side. The Chamber advocated for, and Congress successfully passed, the Trade Facilitation and Trade Enforcement Act of 2015, and now the threat of counterfeits can be drastically reduced by effective border enforcement and implementation of key intellectual property provisions in the Bill. Customs officers can now capture photos and samples to share unredacted and in a timely manner with the private sector to make sure that fake, unsafe product do not end up in the hands of unsuspecting consumers. Specially, the U.S. Chamber is very encouraged by the intellectual property provisions below:

- The National Intellectual Property Rights Coordination Center is authorized and funded (Section 305);
- A Chief Innovation & Intellectual Property Negotiator is established (Section 611);
- The Special 301 Report will include consideration of Trade Secrets protection (Section 612);
- Customs and Border Protection (“CBP”) is required to provide samples of suspected counterfeits to IPR rights holders (Section 628A);
- New Intellectual Property enforcement monitoring tools & procedures are included (Section 611);
- A report to Congress from ICE and CBP on seizures/activities will be required (Section 310);
- Agency submissions to IPEC strategic plan will be required (Section 306);
- Post-seizure information sharing will consistency occur with industry (Section 628A);
- Information sharing with international enforcement partners will occur (Section 310);
- Increased training with domestic enforcement agencies and international partners will be encouraged (Section 305).



The U.S. Chamber looks forward to working with CBP Commissioner Kerlikowske to implement each of these provisions that will prove helpful both to industry and to consumers.

It is vitally important that Congress provide all the IP enforcement agencies with adequate funding. These include CBP, ICE, the National Intellectual Property Rights Coordination Center, and the Department of Justice (including FBI and the regional IP Law Enforcement Coordinators).

As my testimony illustrates, counterfeiting often occurs abroad, but the effects are felt here at home. We should and do strive to stop the problem at its source. This is why action against counterfeiting must include vibrant provisions in the IP chapters of our free trade agreements, which are then approved by Congress and properly implemented by our trading partners.

## **6. Conclusion**

The Chamber is thankful to Congress, and especially the co-chairs of the Congressional Trademark Caucus, Senators Grassley and Coons and longtime leadership Senators Hatch and Leahy, for codifying the National Intellectual Property Rights Coordination Center through the Customs Reauthorization Bill. The Intellectual Property Enforcement Coordinator position, created by the by the Prioritizing Resources and Organization for Intellectual Property Act in 2008 (“PRO-IP Act”), remains a crucial role to build consensus from the IP community. The Chamber strongly supported the law because the responsibility of protecting intellectual property should be at the White House level in order to maximize resources and effectiveness by coordinating efforts with all federal agencies.

We hope this Committee will ensure additional resources for IPEC, the National Intellectual Property Rights Coordination Center, all critical enforcement agencies and partners so that collectively, we can be as effective as possible.

In partnership with law enforcement, the GIPC strives to be one step ahead of the counterfeiter. As of February 2016, small parcel shipments are now seized ten times more than container shipments. The business community responded to this challenge by doubling its efforts. Still, we must identify gaps and work to improve upon existing law. The Defend Trade Secrets Act, recently passed, is a great example of a narrowly tailored solution. Now, we must also work on streaming and other areas of IP protection where Congress can act.

American businesses invest significantly to ensure consumer safety and enforcement of illegal goods. Industry collaboration including a new coalition formed by the U.S. Chamber, the Global Brand Council, has been especially effective working with industry associations and the private sector.

Anti-counterfeiting solutions are best addressed when working collaboratively with Congress, the Administration and federal law enforcement agencies to implement strong intellectual property policies at every level, including with Customs agents at our ports. Each of us appreciates the complexity of budgetary issues and the competition for limited resources. However, the dangers of under-resourced law enforcement to protect consumers and defend the IP rights of the business community are far too significant for us to pause. We must find a way to appropriate additional resources and staff to this growing threat.

We look forward to working with you to create improvements to anti-counterfeiting strategies that will create jobs, support innovation, and protect consumers in the United States and around the world. We must find a way to appropriate additional resources and staff to address this growing threat.