

109TH CONGRESS  
1ST SESSION

# H. CON. RES. 303

Urging the United States Trade Representative to take action to ensure that the People's Republic of China complies with its obligations to protect intellectual property rights, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2005

Mr. DEFazio (for himself, Mr. ROHRABACHER, Mr. SANDERS, Mr. BURTON of Indiana, Mr. RYAN of Ohio, Mr. LIPINSKI, Ms. WOOLSEY, Mr. TAYLOR of Mississippi, Mr. MCGOVERN, Mr. BAIRD, Mr. STUPAK, Mr. BROWN of Ohio, Mr. PAYNE, and Mr. KUCINICH) submitted the following concurrent resolution; which was referred to the Committee on Ways and Means

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## CONCURRENT RESOLUTION

Urging the United States Trade Representative to take action to ensure that the People's Republic of China complies with its obligations to protect intellectual property rights, and for other purposes.

Whereas despite signing bilateral intellectual property agreements with the United States in 1992, 1995, and 1996, the People's Republic of China continues to ignore widespread theft of intellectual property within its borders;

Whereas China further undermines intellectual property rights by exporting counterfeit products to other countries;

Whereas even China's accession to the World Trade Organization (WTO) in 2001, which required that China comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), has failed to stop the theft of intellectual property in China;

Whereas by committing to the TRIPS Agreement, China is bound by minimum standards of protection for copyrights, trademarks, industrial designs, patents, and similar intellectual property rights;

Whereas by committing to the TRIPS Agreement, China is also bound by minimum standards for administrative, civil, and criminal actions against violators of intellectual property rights;

Whereas the December 2004 report to Congress by the United States Trade Representative (USTR) on China's compliance with its WTO obligations documents that significant problems remain with respect to intellectual property protection in China, particularly the enforcement of intellectual property rights, which the USTR reported "remained ineffective in 2004";

Whereas merely changing laws or regulations to provide greater protection for intellectual property rights means nothing unless those rights are vigorously enforced;

Whereas the December 2004 USTR report shows that little progress has been made toward improving enforcement, concluding that "counterfeiting and piracy are at epidemic levels and cause serious economic harm to U.S. businesses in virtually every sector of the economy";

Whereas the 2005 National Trade Estimate Report on Foreign Trade Barriers, also prepared by the USTR, reports that administrative enforcement actions in China "do not

appear to deter further IPR infringement” because the cases result in extremely low fines; the established value for fines is based on the price charged for the counterfeit or pirated good rather than the price of the genuine article; evidence showing a person was warehousing counterfeit goods is not sufficient to prove intent to sell, which means that the value of warehoused goods are not included in fines; and administrative authorities “rarely forward an administrative case on to the Ministry of Public Security for criminal investigation, even for commercial-scale counterfeiting or piracy”;

Whereas the 2005 Foreign Trade Barriers report also states that criminal enforcement in China “has virtually no deterrent effect on infringers” because criminal prosecutions are pursued “in a relatively small number of cases”; “a lack of transparency makes it sometimes difficult to find out if they resulted in convictions and, if so, what penalties were imposed and whether the penalties were suspended”; criminal liability thresholds “were very high and seldom met,” because, among other things, warehoused goods are not included in calculations of the damage done; and China failed “to treat the export of counterfeit or pirated goods on a commercial scale as a criminal act”;

Whereas in the 2005 Foreign Trade Barriers report, the USTR also states that “U.S. companies continued to complain in 2004 that there is still a lack of consistent and fair enforcement of China’s IPR laws and regulation in the courts. They have found that most judges lack necessary technical training and that court rules regarding evidence, expert witnesses, and protection of confidential information are vague or ineffective.”;

Whereas various USTR reports document that, in addition, there is a lack of coordination among Chinese government ministries and agencies that hamper enforcement, and local protectionism and corruption is rampant;

Whereas according to one United States trade association, various counterfeiting and piracy rates in China in 2004 exceeded 90 percent for virtually every form of intellectual property;

Whereas according to the USTR, estimated losses incurred by United States businesses due to counterfeiting and piracy in China range between \$2,500,000,000 and \$3,800,000,000 annually, with the market value for counterfeit goods in China totaling between \$19,000,000,000 and \$24,000,000,000;

Whereas according to the USTR, resolving an allegation of patent theft in China takes 4 to 7 years to complete;

Whereas intellectual property losses in China harm United States businesses both large and small, but are particularly problematic for small companies that may not have the resources to navigate the Chinese legal bureaucracy or to withstand financial losses that occur during the lengthy process to resolve disputes;

Whereas the 2004 Economic Report of the President states that “As trade in goods embodying valuable intellectual property has grown, the protection of intellectual property has emerged as an important policy concern”;

Whereas the report goes on to note that “The Administration has actively pursued measures in trade agreements to ensure the security of U.S. intellectual property rights”;

Whereas the January 2004 Manufacturing in America report by the United States Department of Commerce concludes

that “To the extent that U.S. investment in research and development provides a competitive edge in the marketplace, the protection of intellectual property developed by U.S. manufacturers, which embodies the product of that research, becomes critical to the future of the manufacturing sector”;

Whereas the 2004 Economic Report of the President states that “If countries are found to be in violation of their obligations under a trade agreement, the United States could retaliate against those countries across the entire range of transactions covered by the agreement”;

Whereas on March 9, 2004, then-USTR Robert Zoellick testified before the Senate Finance Committee about the “rampant piracy of intellectual property rights” in China, and went on to say that “China’s lax enforcement of intellectual property rights, including counterfeiting, is a fundamental issue . . . the practices could subvert the development of knowledge industries and stifle innovation around the world”;

Whereas Mr. Zoellick also testified on March 9, 2004, that “We recognize that enforcement of China’s commitments requires sticks as well as carrots, and we are certainly willing to utilize the tools Congress has made available to us. These include . . . WTO dispute settlement, an option we may need to deploy very soon.”; and

Whereas section 301(d)(3)(B) of the Trade Act of 1974 provides specific protections for intellectual property by noting that an act, policy, or practice of a foreign country is unreasonable if it “denies fair and equitable . . . provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obliga-

tions of the Agreement on Trade-Related Aspects of Intellectual Property Rights”: Now, therefore, be it

1       *Resolved by the House of Representatives (the Senate*  
2 *concurring)*, That the Congress—

3           (1) believes that the failure of the People’s Re-  
4       public of China to protect intellectual property is in-  
5       consistent with its obligations under the Agreement  
6       on Trade-Related Aspects of Intellectual Property  
7       Rights and denies the benefits of this agreement to  
8       the United States;

9           (2) further believes that China’s failure to ade-  
10      quately fulfill its obligations to protect intellectual  
11      property is unjustifiable and burdens or restricts  
12      United States commerce under section 301 of the  
13      Trade Act of 1974;

14          (3) strongly urges the United States Trade  
15      Representative to take action under section 301 of  
16      the Trade Act of 1974 to combat rampant intellec-  
17      tual property violations in China, including the im-  
18      position of bilateral tariffs as allowed under section  
19      301; and

20          (4) strongly urges the Trade Representative to  
21      use all additional means available to the United  
22      States, including filing a complaint at the World  
23      Trade Organization, to ensure that China complies

- 1 with its obligations to enforce intellectual property
- 2 rights.

