

September 14, 2023

Hon. Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

Hon. Kevin McCarthy
Speaker
U.S. House of Representatives
Washington, DC 20515

Hon. Mitch McConnell
Republican Leader
U.S. Senate
Washington, DC 20510

Hon. Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Re: FY24 NDAA – Strengthening Border Enforcement of Intellectual Property

Democratic Leader Schumer, Speaker McCarthy, Republican Leader McConnell, and Democratic Leader Jeffries:

As Congress resumes its work on the National Defense Authorization Act for Fiscal Year 2024 (NDAA), we write to encourage your support for provisions that will strengthen the enforcement of intellectual property rights at our borders. To that end, we urge you to include Section 1399M (re: Sharing of Information with Respect to Suspected Violations of Intellectual Property Rights) of the Senate-passed NDAA as part of the final legislative package advanced by Congress.

Intellectual property remains a driving force behind the U.S. economy and our competitiveness globally; it is a vital component of our economic security, and in turn, our overall national security. Our associations, and the thousands of members we represent, are deeply concerned with the ongoing theft of American innovation and creativity by foreign actors. Trademark counterfeiting, copyright piracy, and other forms of IP theft are an assault on the very foundation of our economy, causing hundreds of billions of dollars-worth of harm each year to legitimate manufacturers and their employees, and threatening the health and safety of American consumers.¹

¹ “Combating Trafficking in Counterfeit and Pirated Goods: Report to the President of the United States, Department of Homeland Security (2020), available at: https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf.

In Fiscal Year 2022, U.S. Customs and Border Protection (CBP) seized over 20,000 shipments, valued at nearly \$3 Billion, for intellectual property violations.² While the volume and value of goods at issue is astounding, so too is the variety, encompassing automotive parts, electronics, pharmaceuticals, personal care products, apparel, footwear, toys, and food and beverages. Also among the items seized by CBP were more than 270,000 fake COVID-19 test kits, along with nearly 6 million items of personal protective equipment intended for distribution to your constituents and front-line workers.³

Despite the commendable efforts of our colleagues at CBP, we know that the volume of counterfeit goods seized each year represents only a small fraction of the goods that ultimately reach the consumer market. But we also know from where these counterfeit goods are coming, how they're getting into the country, and how we can more effectively identify the bad actors responsible and disrupt their illicit shipments. Approximately 60% of counterfeit seizures (by value) originated from the People's Republic of China.⁴ And, overwhelmingly, those seizures involve goods imported by international mail or express consignments.⁵ These figures strongly correlate with illegal sales through e-commerce channels. Regrettably, CBP has been greatly limited in its ability to share relevant enforcement data with industry partners in the e-commerce and shipping sectors.⁶ Senator Grassley, with bipartisan support from Senator Hassan, has championed the inclusion of Section 1399M as a commonsense solution to this longstanding concern. If enacted, these provisions will both expand and clarify CBP's authority to share actionable intelligence with responsible stakeholders in the distribution chain, which will in turn facilitate increased proactive efforts by the private sector to identify and remediate those bad actors who seek to exploit legitimate services for illegitimate purposes. Moreover, they would serve to greatly enhance the sort of public-private partnership that has long been a cornerstone of IP enforcement at our borders.

The trafficking of counterfeit and pirated goods poses an urgent threat to the U.S. economy, to the companies small and large who drive innovation and develop products whose reputation for quality is unsurpassed in the global market, to the employees of those companies, and ultimately, to American consumers. And though we applaud the efforts of CBP in addressing these concerns, Congress must act to ensure that the agency has the necessary resources and authority to carry out its mission of safeguarding U.S. trade. Accordingly, we ask for your support to ensure that these provisions are enacted as part of the National Defense Authorization Act for Fiscal Year 2024.

² "Intellectual Property Rights Fiscal Year 2022 Seizures," U.S. Customs and Border Protection (2023), available at: <https://www.cbp.gov/trade/priority-issues/ipr>.

³ *Id.*

⁴ *Id.*

⁵ *See, Id.*, noting that over 75% of IP-related seizures were made in connection with attempted importation via international mail or express consignments.

⁶ *See*, Protecting E-Commerce Consumers From Counterfeits: Hearing Before the Committee on Finance, 115th Congress (2018) (Testimony of Brenda Smith, Executive Assistant Commissioner, Office of Trade, Customs and Border Protection).

We look forward to working with you on this issue and stand ready to provide any assistance you may require.

Sincerely,

Alliance for Automotive Innovation (AAI)
Alliance for Safe Online Pharmacies (ASOP Global)
American Apparel and Footwear Association (AAFA)
American Intellectual Property Law Association (AIPLA)
Automotive Anti-Counterfeiting Council (A2C2)
Entertainment Software Association (ESA)
Global Innovation Policy Center (GIPC)
Halloween & Costume Association (HCA)
International AntiCounterfeiting Coalition (IACC)
Juvenile Products Manufacturing Association (JPMA)
Semiconductor Industry Association (SIA)
The Partnership for Safe Medicines (PSM)
The Pharmaceutical Security Institute (PSI)
The Toy Association
Transnational Alliance to Combat Illicit Trade (TRACIT)

Cc:

Hon. Jack Reed, Chairman, Senate Armed Services Committee
Hon. Roger Wicker, Ranking Member, Senate Armed Services Committee
Hon. Mike Rogers, Chairman, House Armed Services Committee
Hon. Adam Smith, Ranking Member, House Armed Services Committee
Hon. Ron Wyden, Chairman, Senate Finance Committee
Hon. Mike Crapo, Ranking Member, Senate Finance Committee
Hon. Jason Smith, Chairman, House Ways and Means Committee
Hon. Richard Neal, Ranking Member, House Ways and Means Committee
Hon. Dick Durbin, Chairman, Senate Judiciary Committee
Hon. Lindsey Graham, Ranking Member, Senate Judiciary Committee
Hon. Jim Jordan, Chairman, House Judiciary Committee
Hon. Jerrold Nadler, Ranking Member, House Judiciary Committee