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Global Marketplace Expands Landscape of Counterfeiting

By **Evan Clark**

WASHINGTON — The Bush administration is wielding an array of weapons in its effort to crack down on fakes, from including intellectual property provisions in trade agreements to seizing goods at the border.

But a trio of Cabinet-level officials speaking at the U.S. Chamber of Commerce's "Countering Global Counterfeiting and Piracy" conference here last week said that despite these measures, intellectual property protection will continue to be a pervasive problem as the global market expands.

Fake goods cost U.S. companies between \$200 billion and \$250 billion annually and are responsible for the loss of more than 750,000 jobs, according to government estimates. Fashion firms, especially those in the luxury sector where brand name is paramount, have long grappled with the illicit competition.

Commerce Secretary Carlos Gutierrez, U.S. Trade Representative Susan Schwab and Attorney General Alberto Gonzales addressed the conference, which ran Sept. 28-29, stressing the need for vigilance as the U.S. economy increasingly shifts towards a dependence on innovation and the creation of new technology.

"We're going to make this a priority for many years to come," said Gutierrez. "Globalization just makes the challenge all the more important for our companies. In many ways, ironically, globalization actually facilitates counterfeiting."

As technological advancements and international commerce knit countries closer together, it has become easier to steal other people's ideas.

"Innovation is important today to our economy. It's going to be more important in the future so intellectual property will be more important as we go forward," said Gutierrez. "We don't treat intellectual property with the rigor that it should have. This is the same as counterfeiting money and it should be treated as such."

The Commerce Department is expanding its intellectual property attaché program, devoting more people and resources to focus on the issue in China, Brazil, Russia, India and elsewhere. Last year, Chris Israel was named the first U.S. coordinator for international intellectual property enforcement to help make sure the various parts of the administration are on the same page.

When other countries prove to be ineffective at protecting intellectual property rights, the U.S. Trade Representative's Office bears part of the responsibility for putting them on track.

"Our enforcement tools range from jawboning at one end to litigation at the [World Trade Organization] and retaliation at the other," said Schwab.

Countries found to be in violation of WTO rules are subject to increased tariffs, or "retaliation," in order to offset the impact of the offense. The agency also negotiates trade pacts, in which it inserts protections for brands and copyrights.

Figuring prominently in the agency's Special 301 report, which Schwab described as an "annual report card on bad actors," were China and Russia. She acknowledged China has made a "fair amount of progress," particularly in the rules area, but lacks follow-through.

"It's all well and good to have the right rules and procedures," she said. "But if you don't have enforcement mechanisms backing them up, the best-laid intentions and best laws and regulations in the world aren't going to help you."

China, which produces a third of all apparel and textiles imported to the U.S., is also the place of origin for 63 to 70 percent of the goods seized at the U.S. border for infringing on intellectual property rights, she noted.

Having already done a fair amount of jawboning, Schwab said it might be time to get tough with China.

"One of the possibilities we've been looking at is taking a case against China to the WTO on intellectual property," said Schwab.

This has its pitfalls, however, since bringing a case to the global body and winning the right to impose retaliatory tariffs does not directly impact counterfeits.

"We will be successful when other countries are convinced that it is in their own best interest to protect the intellectual property of goods that are sold and produced in their countries," she said.

Nils Montan, president of the International AntiCounterfeiting Coalition, said the U.S. approach to the problem of counterfeiting is comprehensive in theory, if not as comprehensive in the results it produces.

"More money needs to be placed on the issue," said Montan, who attended the conference and wants to see more attention paid to keep counterfeits out at the border. "Just because we have a few people coordinating doesn't mean we're putting the resources there."

Still, Montan said the Bush administration deserves "good marks" for its work with China.

Looking to the future, the country's top lawman is also trying to get laws with a sharper bite to ward off counterfeiters.

"We are seeking legislation that would, among other things, increase penalties for intellectual property crimes, clarify that registration of a copyright is not required for a criminal prosecution, make attempts to commit copyright infringement a crime, and increase the tools investigators have at their disposal to track potential intellectual property crimes," said Gonzales, in prepared remarks.

"The theft of intellectual property is not just a cheap bootleg movie or an imitation Gucci bag sold on the street corner, what some might see as a harmless distraction," he said. "Stealing is stealing."