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Section 332 Investigation on Effects of Intellectual Property Right Infringement in China

On April 19, 2010, Senators Baucus and Grassley of the Senate Finance Committee requested that the U.S. International Trade Commission (“ITC”) conduct an investigation under Section 332(g) of the Tariff Act of 1930 regarding the effects of intellectual property right (“IPR”) infringement in China on the U.S. economy and employment. This memorandum summarizes the structure and objectives of a Section 332 investigation.

The Baucus/Grassley Request

In their request to the ITC, Senators Baucus and Grassley note that while “intellectual property plays a key role in driving innovation, productivity, employment, and growth in the U.S. economy,” “IPR infringement, both in the physical world and online, is estimated to cost U.S. companies billions of dollars per year in lost revenues in China alone.” Further, they note that more than 80% of IPR-infringing goods seized at the U.S. border are of Chinese origin. Because the U.S. government has not conducted a comprehensive analysis of the economic effect of IPR infringement in China on the U.S. economy and U.S. jobs, the Senate Finance Committee has requested the ITC to conduct an investigation and issue two reports. First, the Committee requests a report based on literature and other available information that (1) describes the principal types of IPR-infringement in China, (2) describes China’s indigenous innovation policies, and (3) outlines analytical frameworks for quantifying the effects of infringement and indigenous innovation policies on the U.S. economy and U.S. jobs. Second, the Committee requests a report based on an analysis of data and other available information, including a survey of U.S. firms that (1) describes the size and scope of IPR infringement in China, (2) quantifies the effect of reported IPR infringement on the U.S. jobs and the broader economy, including potential effects on sales, royalties, and license fees of U.S. firms, and (3) discusses and quantifies actual, potential, and reported effects of China’s indigenous innovation policies on the U.S. economy and U.S. jobs. The reports are scheduled to be delivered on November 19, 2010 and May 2, 2011, respectively.

The ITC Section 332 Investigation

Under 19 U.S.C. § 1332(g), upon the request of the President, the House Ways and Means Committee, or the Senate Finance Committee, the ITC is required to investigate import issues and their effects on U.S. industries and labor. This “Section 332 investigation” is a general fact-finding inquiry conducted for the purpose of collecting and analyzing information regarding the trade laws and their effect on the U.S. economy. Section 332 investigations cover a broad range of topics, including the widespread effects of U.S. customs laws, tariff and trade matters, commercial treaties and conditions of competition between U.S. and foreign industries.

To become a party to the investigation interested persons must file an entry of appearance with the Secretary of the ITC within 21 days of publication of notice of the initiation of the

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investigation in the Federal Register. Each entry of appearance must briefly state the person's reason for participating in the investigation and whether the person intends to file briefs with the ITC during the investigation. A person found to have a proper reason for participating in the investigation will be allowed to participate as a party.

Once the investigation is initiated, the ITC's staff of professional economists and trade experts conducts research and solicits questionnaire responses and written briefs from the parties to gain a complete understanding of the issues involved. In large investigations the ITC generally holds one or more hearings at which parties may testify about the issue under investigation. Parties to the investigation may participate in the hearing, either in person or by representative. In some circumstances, a nonparty who has testimony or arguments that may aid the ITC's deliberations may also participate in the hearing.

Benefits of Participating in Section 332 Investigations

At the end of the investigation, the ITC synthesizes the information gained from its research and the interested parties' questionnaires, briefs, and testimony into a report which it provides to Congress and the President. The report includes the relevant economic data and the ITC's conclusions about the effects of Chinese IPR infringement on U.S. industries and employment. While the ITC does not make policy recommendations, Congress and the Executive Branch can use the information in a Section 332 report to shape international trade policy.

By itself, the Section 332 report does not have any direct effect on the treatment of imports. It is not sufficient to establish any additional duties, quotas, or any other import costs, rules, or restrictions. A Section 332 report, however, is often an important first step in the initiation of future trade actions. In the past, domestic industries have requested Section 332 investigations in order to generate a record of information that can be used as evidence in an international trade case, or to persuade Congress to take legislative action.