



EVAN R. GADDIS

President and Chief Executive Officer

April 30, 2007

Ambassador Susan Schwab
United States Trade Representative
600 17th Street, N.W.
Washington, DC 20508
FR0707@ustr.eop.gov

Subject: China IPR Protection and Enforcement (DS-362)

Dear Ambassador Schwab:

Following on USTR's April 23 *Federal Register* Notice, I write to inform you that the National Electrical Manufacturers Association welcomes the U.S. Government's recent decision to file a dispute settlement case with the World Trade Organization (WTO) regarding China's laws for protecting and enforcing intellectual property rights.

We also applaud you for correctly citing in your announcement that electrical equipment is one of the principal product areas impacted by counterfeiting in China. Aside from the commercial impact of counterfeiting, counterfeit electrical products are often substandard and unsafe. Evidence for this proposition is collected on our website at <http://www.nema.org/gov/anti-counterfeiting/news.cfm>. Worldwide IPR protection is a fundamental concern for U.S. electrical equipment manufacturers, but the situation in China is particularly acute. While the national government in Beijing has taken some initiatives against counterfeiting in recent years, our members and American consumers are still all too often victimized by trademark infringement.

In this respect, concerning the threshold for criminal prosecution mentioned in your Notice, NEMA members have observed that some Chinese counterfeiting operations appear to be structured in such a way as to evade the thresholds for criminal enforcement. We have seen evidence that the actual production of counterfeit products is parceled out to multiple small assembly shops, where the total amount of production falls under one or both of the dollar thresholds for criminal prosecution as per the Interpretation by the Supreme People's Court on November 2, 2004.

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Both common sense and empirical evidence indicate that these smaller batches of production are really part of a larger scheme. First, counterfeiting of electrical products tends to occur with relatively low-price products, which need to be produced and sold in volume to be economically viable. Counterfeiting of electrical products occurs on a commercial scale in virtually every instance. Second, when counterfeit electrical products are seized at ports in the Western hemisphere, larger volumes (than those found in production) are discovered in containers with variation in quality indicating that the product was produced in different places by different people. Furthermore, parceling out production to small garage-like operations allows those who are financing the purchase of components, assembly, and ultimately arranging the exportation of these products to evade detection.

NEMA submits that numerical thresholds are prohibited by Articles 41.1 and 61 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which specify that remedies for intellectual property rights infringement “constitute a deterrent to further infringement.” The numerical thresholds offer the opportunity to structure illegal activity to evade criminal prosecution, and under such circumstances hardly establish a deterrent. Article 61 of TRIPS mandates that “Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale.” There is no relationship between the valuation thresholds set by the Supreme People’s Court for criminal prosecution and “commercial scale” production of electrical products. China should be encouraged to amend its Criminal Code to eliminate the need for “serious circumstances” and “relatively large sales” criteria, as well as adopt criteria for criminalization that are consistent with international practice and TRIPS Article 61.

The National Electrical Manufacturers Association is the trade association of choice for the electrical manufacturing industry. Founded in 1926 and headquartered near Washington, D.C., its 430 member companies manufacture products used in the generation, transmission and distribution, control, and use of electricity. These products are used in utility, medical, industrial, commercial, institutional, and residential applications. Domestic production of electrical products sold worldwide exceeds \$120 billion. In addition to its headquarters in Rosslyn, Virginia, NEMA also has offices in Beijing, Sao Paulo, and Mexico City.

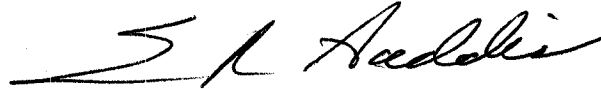
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Again, we thank you for your efforts on this important topic, and look forward to continuing our work with you and the inter-agency team.

Respectfully,

A handwritten signature in black ink, appearing to read "E. R. Gaddis". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Evan R. Gaddis
President & CEO

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