

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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The legislative process is a mystery to many of our nation's citizens. The complicated rules of Senate procedure, the roles played by committees and subcommittees and conferences, the interest of many outside parties, and the inherent difficulty of addressing problems of national significance all threaten to render law-making incomprehensible to our constituents. And what people do not understand, they may fear and mistrust.

One of the principle obligations of an elected representative is to make the acts of representation - voting on the floor, drafting bills, holding hearings, participating in debate - as clear and comprehensible as possible to the people he or she represents. Many of us, myself included, sometimes complain about the pace of business here in the Senate. But when that pace is slow because it is deliberate, we are serving our citizenry. When complicated issues - like the trademark problem before us this afternoon - receive comprehensive study and thoughtful action, then those we serve can be satisfied that Congress knows what it is doing when it passes a given law.

The Section 211 provision that we are examining today did not go through this normal process. Nor was this measure merely rushed into law as Congress has done when times have called for quick action. Rather, we are focusing today on legislation that was snuck into an appropriations bill under the radar of most members of the Senate, done in a way specifically intended to bypass the normal legislative process.

In 1998, Section 211 was inserted into the Omnibus Appropriations Bill to affect the outcome of a dispute over the "Havana Club" trademark for rum. Section 211 prohibits the registration or renewal of registration of a trademark of a business that was expropriated by the Cuban government. It also disallows "any assertion of rights" by Cuban entities, or a foreign successor in interest to a Cuban entity, with respect to trademarks of expropriated businesses. Finally, the provision states that no U.S. Court may recognize the attempt by a Cuban entity or its successor in interest, from asserting treaty rights with respect to an expropriated mark unless the owner expressly consents.

The European Communities challenged the legality of this provision before the World Trade Organization. In December 2001, the WTO found that Section 211 violated the Agreement on Trade Related Aspects of Intellectual Property Rights, because it could place additional burdens on foreigners not faced by U.S. citizens in enforcing intellectual property rights. Unless the United States brings its domestic law into compliance with the WTO's ruling, U.S. exports could face sanctions abroad.

Unfortunately, the effort to bring the U.S. into compliance with the WTO ruling took the same path as the original enactment of Section 211: An effort to sneak a fix into the U.S. Code without the appropriate legislative sunshine. When I became aware that the Armed Services appropriations bill last fall was the likely vehicle, I objected, and I am pleased that we have finally brought this issue to the light of the legislative day here, where it belongs, in the Judiciary Committee hearing room.

The United States demands a great deal from its trading partners when it comes to intellectual property rights. And as the world leader in intellectual property, we have the most to gain from strong protections that ensure patent-, copyright-, and trademark-holders are afforded the rights they deserve whatever their nationality. Today, we will no doubt hear a great deal about the two bills pending before this Committee that aim to solve the problems created by Section 211. While I understand that both will bring the United States into compliance with the WTO's ruling, I am interested in the broader implications to our international trademark policy of both proposals.

I thank the Chairman for holding this hearing, so that this issue can finally receive the type of airing that would have been appropriate six years ago. I also would like to thank Senator Graham for chairing this hearing, as well as the witnesses for coming here today to share their testimony.