Opening Statement for Rep. Sensenbrenner

House Select Committee on Energy Independence and Global Warming: Climate for Innovation Technology and Intellectual Property in Global Climate Solutions

Wednesday, July 29, 2009

Global warming has become less about science than opportunism. Soon after scientists rang alarm bells on carbon emissions, everyone from financial institutions to developing nations realized they could get rich off of it. So while scientists continue to debate the best course of action, those with vested interests declare that "the science is settled" and offer solutions that, conveniently, would also make them rich.

But we can't allow the need for action to make us victims of self-serving proposals against American interests. Efforts to weaken Intellectual Property Rights (IPR) in the ongoing U.N. climate change negotiations are a perfect example. Developing countries, like China and India, see climate change as an opportunity to gain free access to American IPR, but far from mitigating climate change, relaxation of IPR would ruin our only hope of responding.

China, along with other developing countries in the so-called “Group of 77,” wants the U.N. to establish an “Executive Body of Technology” that would be governed by many of these same countries. The Chinese and others propose that this body would determine “technology-related financial requirements” and seek to ensure that privately owned technologies are available, despite the intellectual property protections.

Put simply, China and the developing nations seek to transfer the developed world’s clean energy technology to an unelected U.N. body, which they would control.

The current draft U.N. negotiating text that will be considered in Bonn in early August includes proposals that would “exclude from patenting in developing countries environmentally sound technologies to adapt to or mitigate climate change,” require “compulsory licensing for environmentally safe and sound technologies,” and ensure “access to intellectual property protected technologies and associated know-how to developing countries on non-exclusive royalty-free terms.”

These governments argue that the risks of climate change justify free access to technologies to help mitigate it. The result would be a transfer of billions of dollars worth of the latest technologies. But the argument mistakes or willfully ignores the truth that technology is not a natural resource that can be pulled from the ground. New technologies will exist only if there are incentives to create them. Innovators should know that if they invest their time and money, their innovations will be protected, not given away.

Chairman Markey and I respectively disagree on how best to respond to climate change, but I think we agree that advanced technologies will ultimately be the solution. Whether we adopt new taxes or a more economic approach, which I advocate, companies won't invest in new technologies unless we have strong IPR to protect them. As Steve Fludder, the head of the Ecomagination division of General Electric, told the New York Times: "Why would anybody invest in anything that they would have to just give away?"

China and India, in particular, have had a checkered history of protecting intellectual property.

The U.S. Trade Representative (USTR) reported to Congress in April that neither China nor India “provide an adequate level of IPR protection or enforcement, or market access for persons relying on intellectual property protection,” and placed both on its priority watch list of worst offenders.

The Trade Representative’s report said “overall piracy and counterfeiting levels in China remained unacceptably high in 2008” and its “IPR enforcement regime remains largely ineffective and non-deterrent, ” while “piracy and counterfeiting, including of pharmaceuticals, remain a serious problem in India” and its “IPR enforcement regime remains weak.”

Rather than demanding free access to new technologies, if developing countries want to mitigate climate change, they should pledge to protect them.

As the world works toward a new international agreement on climate change, I urge the Obama Administration to end hopes that IPR will be freely granted by proposing new language for a climate change treaty that strengthens intellectual property and promises to protect and encourage technological innovation.

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