

Whitehouse: Counterfeits Pose Danger to Our Troops

RI Senator Urges Support for Measure to Crack Down on Counterfeit Military Products

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Washington, DC – In response to increasing numbers of counterfeit products in the military supply chain, U.S. Senator Sheldon Whitehouse (D-RI) recently introduced bipartisan legislation to crack down on criminals who traffic in these dangerous goods. The Combating Military Counterfeits Act of 2011, which is cosponsored by U.S. Senators John McCain (R-AZ), Lindsey Graham (R-SC), and Chris Coons (D-DE), would increase penalties and create a heightened criminal offense for trafficking in counterfeit military products.

Today, Senator Whitehouse spoke on the floor of the U.S. Senate to bring attention to this growing problem and urge support for this important legislation.

The text of Whitehouse's remarks, as prepared for delivery, is below. Video is available at www.youtube.com/SenatorWhitehouse.

MR. PRESIDENT, I rise to speak about a bill I have introduced with Senator McCain, Senator Graham and Senator Coons: the Combating Military Counterfeits Act of 2011. This bill will enhance the ability of prosecutors to keep counterfeit goods out of the military supply chain. In so doing, it will help protect America's armed forces from the risk of defective equipment.

Our nation asks a lot of our troops. In return, we must give them the best possible equipment to fulfill their vital missions and come home safely. We must ensure the proper performance of weapon systems, body armor, aircraft parts, and countless other mission-critical products.

Today, however, America's military faces a significant and growing threat: counterfeit products entering the military supply chain.

These counterfeit products do not meet military standards. As a result, they put troops' lives at risk, compromise military readiness, and cost the country enormous sums in replacement costs.

In the case of microelectronics, counterfeit parts also provide an avenue for cybersecurity threats to enter military systems, possibly enabling hackers to disable or track crucial national security applications.

All of us in the Senate want to protect our troops' safety and enhance our national security. No one who has visited with our military – as I have had the privilege of doing in my home state of Rhode Island, as well as in Iraq and Afghanistan – can accept criminals making an easy buck selling fake versions of products intended to help our troops. Unfortunately, however, this unacceptable threat to troop safety and national security is growing.

A report by the Government Accountability Office provides examples that demand stiff criminal punishment.

It explains that the Defense Department found out in testing that what it thought was "Kevlar" body armor was in fact nothing of the sort and could not protect our troops the way proper Kevlar can. Our troops going out on patrol in fake body armor is simply unacceptable.

It is shameful criminal behavior: putting our troops' lives at risk just to make a buck. The law must provide strong deterrence and harsh sanctions for such conduct.

In another example, a supplier sold the Defense Department a part that it falsely claimed was a \$7,000 circuit that met the specifications of a missile guidance system. Military grade chips are called that for a reason: they are required to withstand extreme temperature, force, and vibration. Chips that don't meet those specifications are prone to fail – for example, when a jet is at high altitude, when a missile is launching, or when a GPS unit is out in the field. The possible tragic consequences of such equipment failing are unthinkable.

A January 2010 study by the Commerce Department quoted a Defense Department official as estimating that counterfeit aircraft parts were "leading to a 5 to 15 percent annual decrease in weapons systems reliability."

The Commerce Department study, which surveyed military manufacturers, contractors, and distributors, reported approximately two and a half times as many incidents of counterfeit electronics in 2008 as in 2005. The high prices of military grade products are only going to attract more and more counterfeiters.

One source of the problem has been the often illegal dumping of U.S. electronics on countries such as China. Business Week reported in 2010 that used computer chips from old personal computers are fraudulently re-marked in China as "military grade" chips and sold to U.S. military suppliers. A bill I introduced last week, the Responsible Electronics Recycling Act, would help address this issue by cracking down on the dumping of electronic waste.

We should also evaluate this bill in the context of the relentless cyber attacks America weathers every day. The chip might not only be counterfeit, it might be the carrier for dangerous viruses and malware that may create windows our enemies can enter, to sabotage our military equipment, to steal our military secrets.

I applaud those of my colleagues who have been working with the Department of Defense to ensure that it does everything it can to keep counterfeits out of its supply chain.

I particularly appreciate the leadership on that issue of Chairman Levin and Ranking Member McCain of the Armed Services Committee. I also am pleased that the Administration, and particularly the Intellectual Property Enforcement Coordinator, Victoria Espinel, is working hard to protect our military from counterfeits, and that the National Intellectual Property Rights Coordination Center recently began "Operation Chain Reaction," a new initiative targeting counterfeit items entering the military supply chain.

I also believe that strengthened criminal provisions should be part of our strategy going forward. As a former United States Attorney, I know the significant deterrent effect criminal sanctions can provide.

The Department of Justice has a vital role to play in using criminal investigations and prosecutions to identify and deter trafficking in counterfeit military goods.

To that end, the Administration proposed increasing penalties for trafficking in counterfeit military goods as part of recent recommendations to Congress for better protecting American intellectual property. I am glad that the Administration has recognized the need for legislation and look forward to working with them to see the necessary changes made to our laws.

Our laws currently do not impose any special punishment for trafficking in counterfeit military goods. 18 U.S.C. § 2320, the counterfeit trafficking statute, provides for heightened penalties for trafficking in counterfeits that result in bodily injury or death.

This provision provides important increased penalties for cases of counterfeit pharmaceuticals and other counterfeit products that injure Americans. But it is not necessarily helpful in the military context because the counterfeit part may never be recovered from a battlefield, making it impossible to tell whether the counterfeit caused the bodily injury or death.

As a result, traffickers in military counterfeits are likely to face penalties that do not reflect the unacceptable risk that counterfeits impose on our troops, our military readiness, and our national and cyber security.

The legislation I am introducing today with Senator McCain, Senator Graham, and Senator Coons addresses this inadequacy in our laws. I call on my colleagues to join me in seeing it passed into law soon. Traffickers must not get off with light sentences if they knowingly sell the military a piece of counterfeit body armor that could fail in combat, a counterfeit missile control system that could short-circuit at launch, or a counterfeit GPS that could fail on the battlefield. Our troops deserve Kevlar that is Kevlar, and military grade chips that are military grade.

The Combating Military Counterfeits Act of 2011 will make sure that appropriate criminal sanctions attach to such reprehensible criminal activity. Like the bill I introduced last year, it creates an enhanced offense for an individual who traffics in counterfeits and knows that the counterfeit product either is intended for military use or is identified as meeting military standards. It doubles the statutory maximum penalty for such offenses.

The bill also directs the Sentencing Commission to update the Sentencing Guidelines as appropriate to reflect Congress' intent that trafficking in counterfeit military items be punished sufficiently to deter this reckless endangerment of our servicemembers and weakening of our national security.

The bill is carefully crafted so that it does not sweep overly-broadly. By adding an enhanced offense to an existing offense, it targets only particularly malicious offenders – those who already are guilty of trafficking in counterfeit goods and know that they are selling military counterfeits.

This approach means that the bill will not cover legitimate military contractors who might be unaware that a counterfeit chip has made its way into one of their products.

It also does not apply to makers of products that unintentionally fall short of military specifications. This bill instead is intended to help military suppliers by deterring criminals from selling counterfeits to them or to their subcontractors. Manufacturers, like the many high-tech innovators in my home state of Rhode Island, will benefit from the protection of their intellectual property.

To that end, I am grateful for the support that this legislation has received from the Chamber of Commerce, the Semiconductor Industry Association, the International AntiCounterfeiting Coalition, and others. I look forward to working with them and other interested stakeholders to make the legislation as effective as possible at deterring this shameful criminal activity.

I also would like to thank Senator Graham, Senator McCain, and Senator Coons for joining me in introducing this bill today. As my colleagues know, Senator McCain and Senator Graham both long have been champions for our troops, and Senator Coons has already become a staunch defender of our national security and our nation's intellectual property.

I very much look forward to working with them and my other colleagues on this important bill.

All of us in the Senate have had the privilege of visiting with our troops. We all know the sacrifices they make for our country. We all want to do everything we can to ensure that their equipment functions properly and that counterfeits do not compromise our nation's military readiness or security. Passing the Combating Military Counterfeits Act of 2011 will be a vital and much-needed step towards these important goals.

Thank you.

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