

# **EMERGING TRENDS IN U.S. UNFAIR TRADE LAWS AND OPPORTUNITIES FOR PERUVIAN MANUFACTURERS**

## **U.S. Actions to Promote Legal Use of Information Technology in Manufacturing Supply Chains**

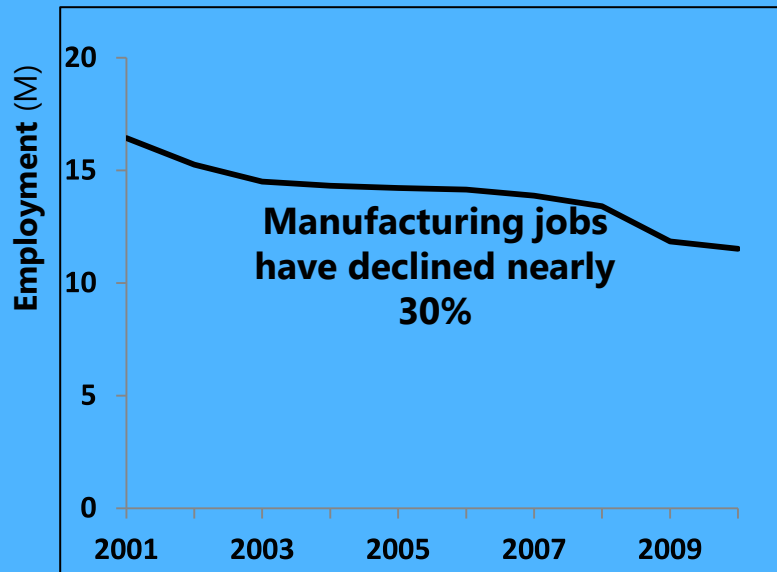
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Lima, Peru  
March 6, 2012

# Economic Trends and Objectives

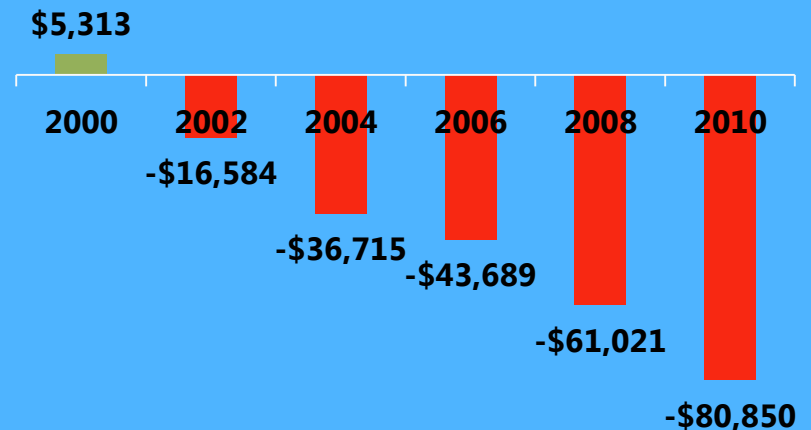
- **Job growth is top priority for U.S. lawmakers and industry**
  - Major drivers of new jobs and economic growth are
    - exports
    - manufacturing
    - innovation
  - Major source of job/revenue losses include
    - IT/IP theft and other unfair business practices that depress export revenues and harm competition and innovation
- **Global supply chain practices are critical to economic growth**
  - Shared responsibility to promote fair competition and economic growth through legal/ethical business practices
  - ***Responsible supply chain practices include legal use of IT***

# Decline in U.S. Manufacturing Impacts U.S. Competitiveness

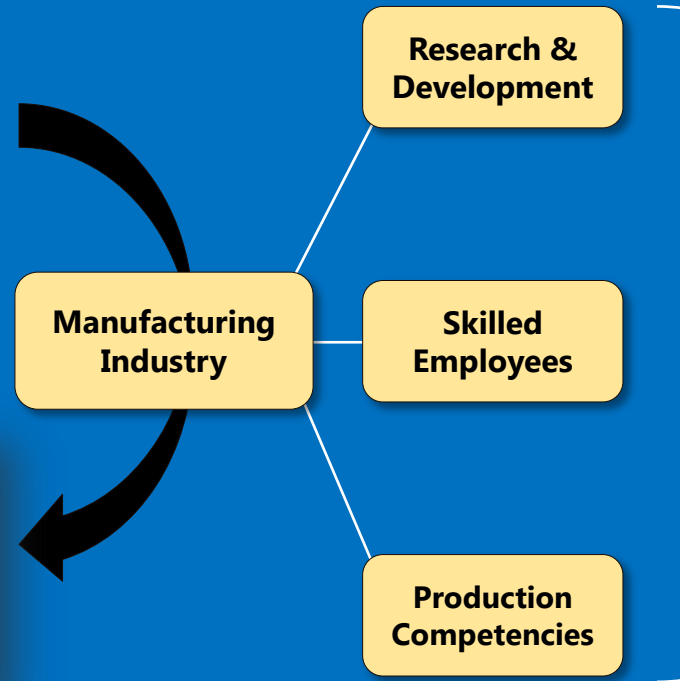
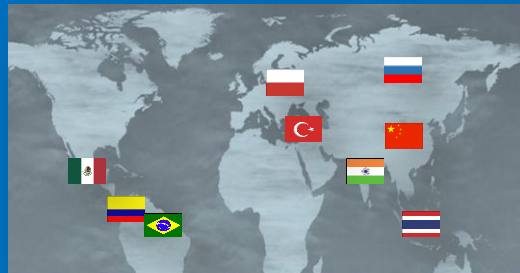
## U.S. manufacturing employment



## U.S. Trade Balance in Advanced Technology Products (\$M)



# Innovation follows Manufacturing: Manufacturing Losses Impair Innovation



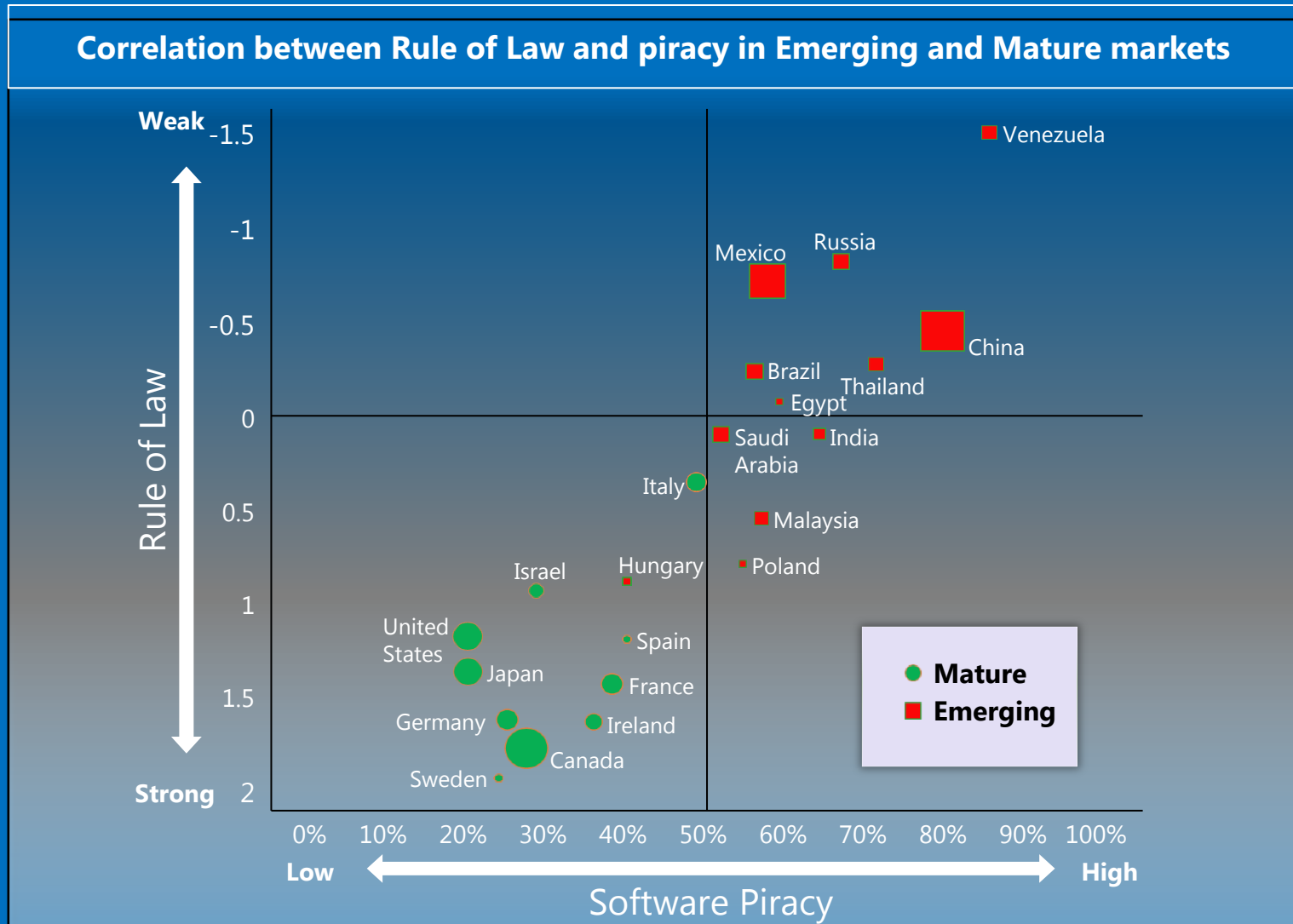
**Semiconductor Manufacturing**



**Migration of semiconductor foundries to Asia led to a decrease in U.S. silicon processing capabilities**

- Proximity matters in R&D knowledge, engineering, and manufacturing skills
- The loss of manufacturing impairs innovation
- *"An economy that lacks an infrastructure for advanced process engineering and manufacturing will lose its ability to innovate."* - Harvard Business Review, Gary Pisano and Willy Shih

# Weak Rule of Law in Certain Emerging Markets Encourages Uncontrolled Piracy



Sources: 2011 BSA-IDC Piracy Study, World Bank, U.S. Census 2010 Foreign Trade data

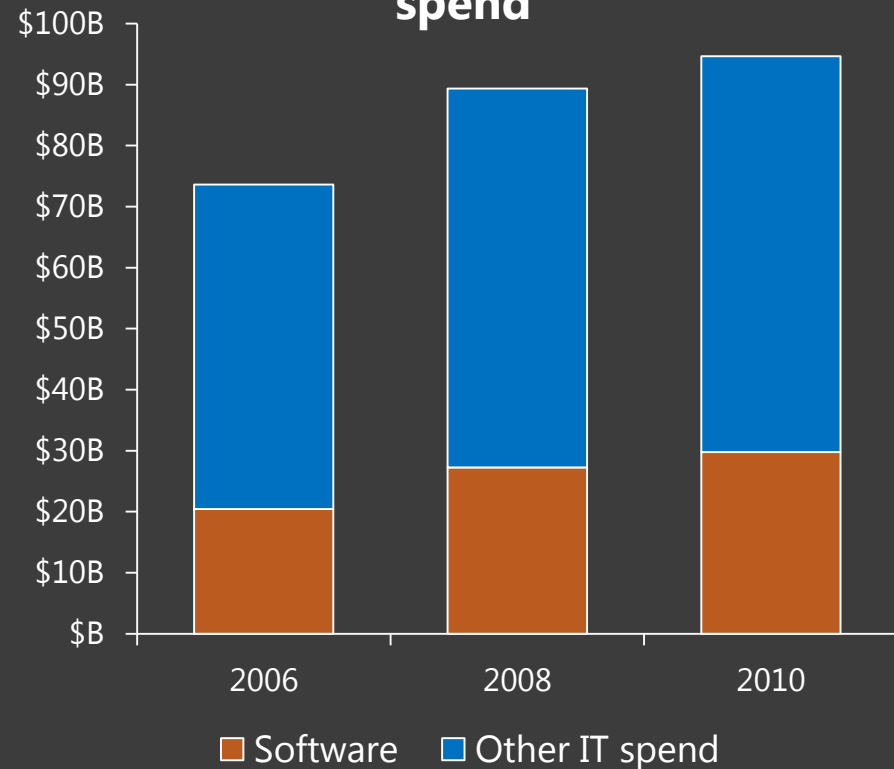
# IT Theft and Lost Jobs

- In a 2010 study, the Business Software Alliance found that a piracy reduction of 10% over 4 years could have enormous economic benefits, not only to the U.S. but also to the local economies:
  - World Impact: **\$142 Billion** (added GDP); **491,526** (new jobs)
  - U.S. Impact: **\$37.8 Billion** (added GDP); **25,431** (new jobs)
- IT theft overseas is costing jobs in the manufacturing sector
  - U.S. economy has lost over 2 million manufacturing jobs in the last three years, due in part to unfair business practices, including IT theft
- Software piracy...
  - Deprives U.S. economy of appropriate rewards for past innovation and lessens incentives to U.S. companies to invest in future inventions
  - Diminishes long-term competitiveness of the U.S. economy
  - Harms U.S. consumers by reducing U.S. jobs, reducing U.S. tax base and reducing incentives to create new products and services

# Why IT Theft Matters to Manufacturers

IT is a material and unavoidable expense essential to maximize productivity of a modern manufacturing firm. IT theft creates an unfair business advantage.

**U.S. Manufacturing sector IT spend**



# Why IT Theft Matters to Manufacturers

- All manufacturers who compete fairly are hurt when their competitors engage in unethical business practices.
- After research and interviews with manufacturers in emerging markets, four key insights emerged:
  1. Protection of intellectual property is necessary for the growth of innovation.
  2. IT is a point of competitive advantage and differentiation – these firms are industry leaders in large part because of their use of technology.
  3. Firms are well-licensed because it's the ethical decision; pirating software contradicts their corporate commitment to integrity and honesty.
  4. Licensed IT in particular has many technical benefits – it gives them the assurance of partnership with software firms which keeps their operations running at optimal levels.



# Why IT Theft Matters to Peru's Manufacturers

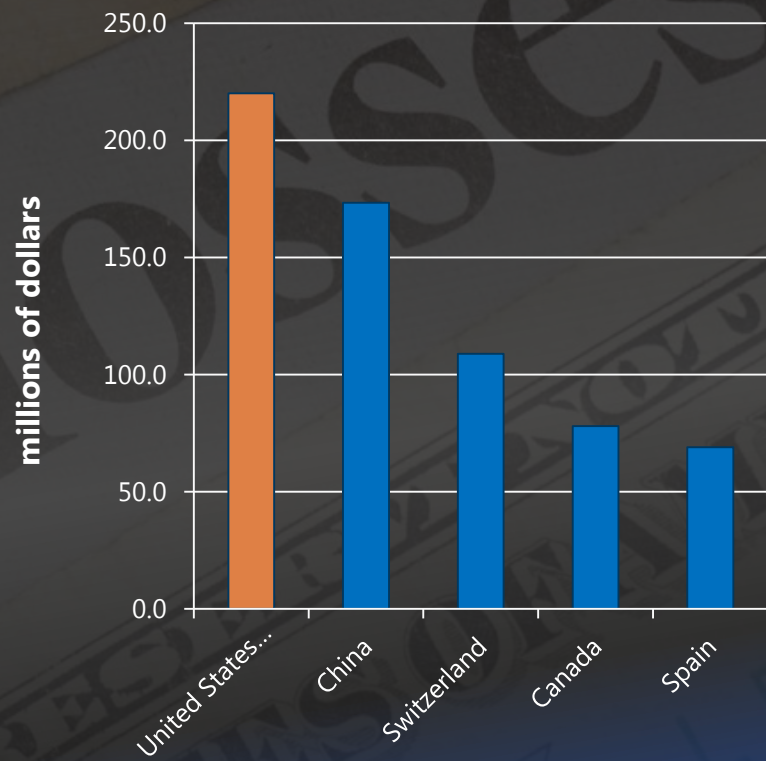
- Manufacturers suffer a competitive disadvantage when their rivals avoid legitimate costs by stealing software.
- In Peru, the annual financial disadvantage to manufacturers playing by the rules is **\$36M**.

Area	Manufacturing employees	# of licensed PCs in firms playing by the rules	Software Lifecycle Disadvantage (5 Year)	Annual Competitive Disadvantage
Peru	1.6M	0.2M	\$178M	\$36M
BRIC	164.8M	8.2M	\$8216M	\$1643M
Latin America	19.8M	2.5M	\$2729M	\$546M

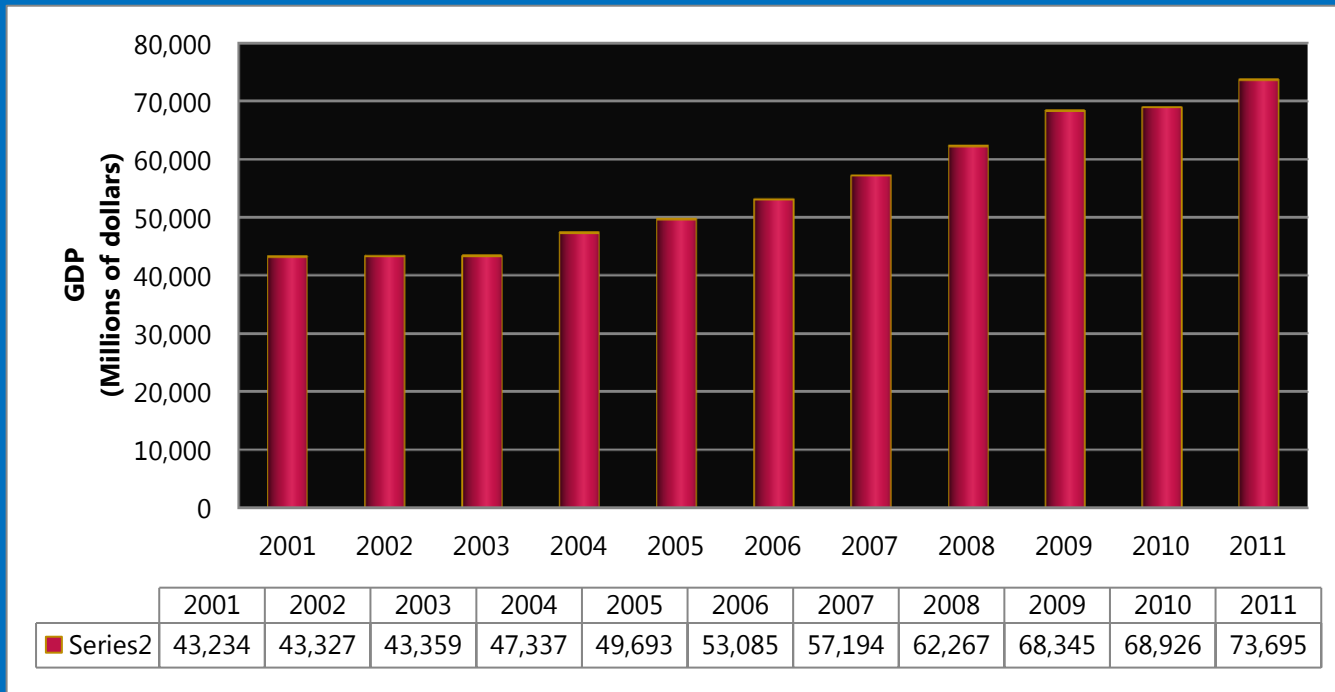
# Why IT Theft Matters to Exporters

- **U.S. companies and policymakers are focusing on the role of global supply chains in promoting economic growth and job creation**
  - Renewed focus on fair competition
  - Creates business opportunities for companies that demonstrate legal/ethical business practices, including legal use of IT

**Main Destinations for Peruvian Exports**



# Peru's Export-Driven Economic Growth



## PERUVIAN EXPORTS (FOB VALUE) BY ECONOMIC SECTOR (MILLIONS OF DOLLARS)

Economic Sector	Dec 10	Dec 11	% Var
Traditional products	670.4	762.3	13.7
Non-traditional products	532.8	613.7	15.2

# Renewed Focus on Fair Competition - Federal

## The U.S. federal government is stepping up its support for fair competition



"It's not right when another country lets our movies, music, and software be pirated.

Tonight, I'm announcing the creation of a Trade Enforcement Unit that will be charged with investigating unfair trade practices. There will be more inspections to prevent counterfeit or unsafe goods from crossing our borders."

U.S. President Barack Obama, January 24, 2012

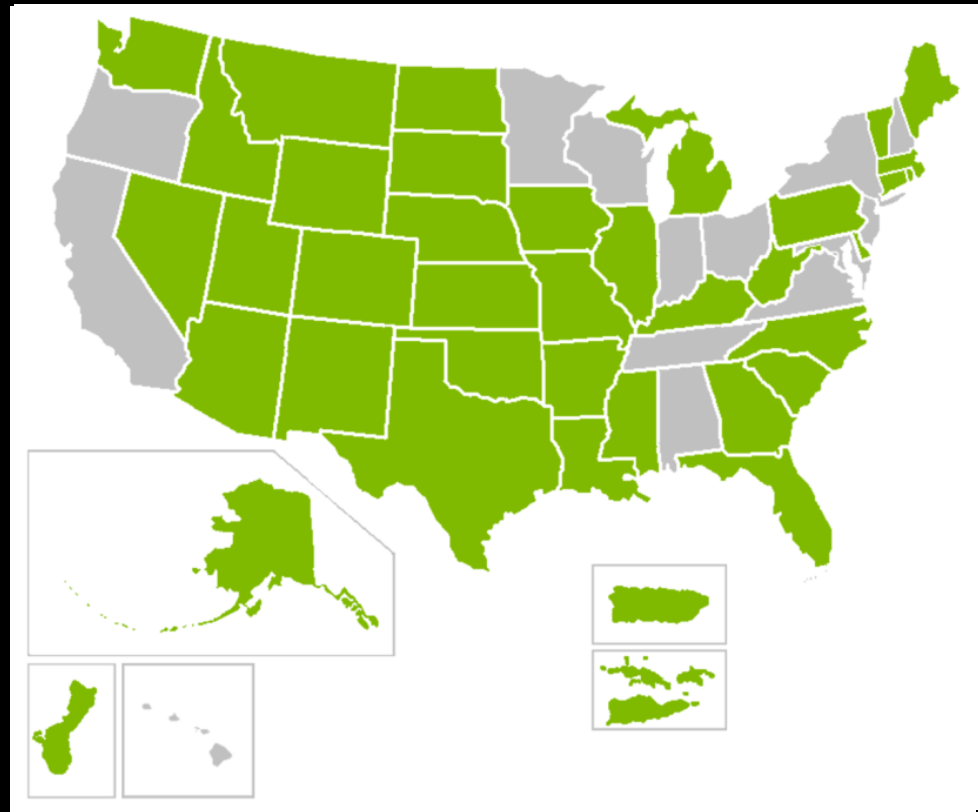
"In the 1990s, businesses used their supply chains to take on the problem of child labor in the developing world... Today, I'm encouraged that a new coalition of major companies is coming together to keep global supply chains free of pirated software and counterfeit goods. That gives innovators their rightful rewards, but it also creates American jobs."



U.S. Secretary of State Hillary Clinton, October 14, 2011

# Renewed Focus on Fair Competition - States

- **States are pushing to level the playing field and restore fair competition in marketplace**
  - 36 AGs have called for enforcement action against manufacturers that use stolen IT to unfairly compete



**Attorneys General from 36 states and 3 territories have signed a letter urging action.**

# Use of Stolen IT as an Act of Unfair Competition

- Potential legal action under existing unfair competition statutes
- **New State Statutes in Washington and Louisiana**
  - New Cause of Action for sale of products in state by manufacturers that steal IT to gain unfair competitive advantage
  - Plaintiffs: Attorney General or harmed manufacturer
  - Defendants: Manufacturers using stolen IT
  - Recourse:
    - Damages = Value of stolen IT X 3 for willfulness
    - Injunctive relief against sale of products
    - In rem jurisdiction over goods if no personal jurisdiction
  - Limited Third Party Liability with safe harbors: Supply Chain Management Practices

# Primary Consequences of Violating the Law

Loss of  
access  
and injunctions  
against sales



Monetary  
damages  
including seized  
products  
and fines



Damage to  
global  
brand and reputation



# Additional Risks of Non-Compliance

Unlicensed software affects the global business eco-system

Security  
threats



Loss of  
business  
productivity



Diminished  
customer  
confidence





# Leveling the Playing Field through Legal Use of IT

- **Manufacturers**
  - Get legal through software asset management (SAM)
    - baseline inventory of software copies and licenses
    - assess extent of under-licensing and over-licensing
    - legalize any unlicensed copies
    - implement SAM procedures and controls
- **Companies that source with manufacturers**
  - Promote legal software use through supply chain practices
    - supplier code of conduct: "supplier is prohibited from using stolen IT"
    - establish requirements and procedures to verify and enforce compliance

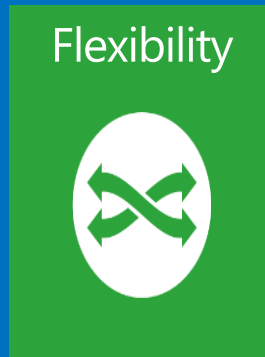
# Ensuring Market Access and Competitiveness through IT Asset Management

- **Partnership with IT providers**
- **Industry best practices**
  - BSA SAM tools
  - ICC-BASCAP IP Guidelines for Businesses
  - EICC code of conduct
- **International standards and certification programs**
  - ISO standard on software asset management (19770)
  - Emerging national and international legal IT certification programs

# Maintaining IT Compliance Has Many Benefits

## Build a competitive advantage

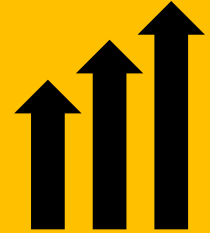
- Increase flexibility and agility
- Improve efficiency, financial security, growth



## Efficiency

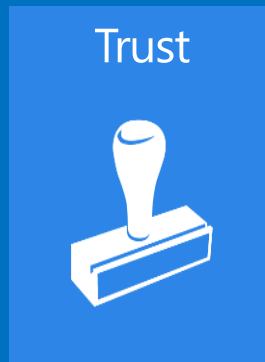


## Growth



## Safeguard your business

- Bring peace of mind, reduce liability
- Maintain good corporate governance



## Integrity



## Transparency



## Enhance your global reputation

- Differentiate business in marketplace
- Build trust by exhibiting integrity and transparency

Thank you