Impact of counterfeiting on international trade

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The Committee on International Trade adopted the own-initiative report drafted by Gianluca SUSTA (ALDE, IT) on the impact of counterfeiting on international trade.

The report recalls that the European Union is the second world importer of goods and services and the extreme openness and transparency of its single market offers huge opportunities but also poses serious risks of an invasion of counterfeit products. In 2007, the amount of goods seized by the customs authorities of the European Union that were in breach of intellectual property rights (IPRs) increased by 17% against the previous year, with an increase of 264% for cosmetics and personal hygiene products, 98% for toys and 51% for medicines. Counterfeiting and piracy has alarming consequences for the EU economy and for the Community social and economic system as a whole, reducing incentives to innovate, curbing foreign direct investment (FDI), eliminating skilled jobs from industry and laying the groundwork for the development of a hidden economic system, running parallel to the legal one and controlled by organised crime.

The multilateral framework: MEPs recall that the Word Trade Organisation (WTO) system aims to ensure that IPRs are more widely recognised internationally, providing for an agreed level of standards of protection through the Trade-Related Aspects of Intellectual Property Rights (TRIPS), dialogue between Member States and with other institutions such as the World Intellectual Property Organization (WIPO) and the World Customs Organization (WCO), as well as a dispute prevention and settlement mechanism. They call on the Commission to persevere in the TRIPS Council to ensure that the minimum rules incorporated into national law are accompanied by effective enforcement measures and measures to prevent infringements. The flexibilities provided for in the TRIPS agreement and confirmed in the Doha Declaration on public health, should be maintained insofar as they are aimed at ensuring a fair balance between the interests of rights' holders and those of end users. The Commission should bring forward proposals to the European Parliament to ensure that export, transit and transhipment operations are appropriately dealt with in the TRIPS agreement and to examine the case for further changes in the agreement, in order to create a fair balance between the interests of owners and those of potential users of IPR, particularly bearing in mind the level of development of the parties involved and distinguishing between countries which produce counterfeit and pirated products, those which use them, and those through which the products transit.

The Commission and the Member States are called upon to:

- develop specific measures, backed up by appropriate financial coverage, in favour of more widespread consumer education in Europe and also in developing countries, in order to avert the risks relating to potentially dangerous counterfeit products;
- propose and support the drafting of a protocol on counterfeiting, in addition to the Palermo International Convention on organised crime;
- to strengthen their cooperation with Euro-Mediterranean partner countries within the Euromed Market programme and promote in the Euro-Mediterranean region a common approach to legislation, procedures and implementation with regard to customs cooperation and action to combat counterfeiting and piracy in order to facilitate trade between Euro-Mediterranean partner countries.

The report points out that in several emerging economies, the production of counterfeit and pirated goods has reached alarming levels and calls for special measures are required in order to strengthen coordination between customs, judicial and police authorities with the countries concerned and to encourage the harmonisation of the laws of these countries with those of the European Union.

The Commission is called upon to introduce, in the same line of Article 3 (2)1 of the Directive of the European Parliament and of the Council 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, safeguards at international level in order to guarantee that any extra patent enforcement measures are not abused to hinder legitimate trade.

In order to step up the fight against counterfeiting, MEPs are convinced that more regular and targeted use should also be made of the WTO?s Dispute Settlement Body, which can provide better protection of European industry and consumers by consolidating a case-law which enhances the substance and scope of the TRIPS agreement.

Anti-Counterfeiting Trade Agreement (ACTA) and other bilateral and regional EU initiatives: the committee calls on the Commission to continue its fight against counterfeiting and piracy, in parallel with the multilateral negotiations, also by means of bilateral, regional and multilateral agreements with a view to approximating and enforcing laws, also by providing for the establishment of efficient dispute settlement systems and penalties in case of failure to comply with the obligations underwritten. ACTA should be negotiated under conditions of the utmost transparency towards the EU citizens, especially with regard to the definitions of the terms "counterfeiting" and "piracy" and the criminal sanction measures foreseen. MEPs support the establishment of a task force to examine the implementation of the agreement, by promoting this subject in dialogue between the European Union and third countries and as part of cooperation measures with those countries. ACTA will not grant public authorities access to private computers and other electronic devices. MEPs believe that emerging economies such as China, India, Brazil as well as regional trade blocs such as Mercosur, CARICOM and ASEAN should be included.

The Commission is called on :

- to avoid the danger of contradictions and overlap between the ACTA, the TRIPS agreement and other international IPR treaties;
- to ensure that ACTA only concentrates on IPR enforcement measures and not on substantive IPR issues such as the scope of protection, limitations and exceptions;
- to ensure that ACTA is not used as a vehicle for modifying the existing European IPR enforcement framework;
- to clarify the role and competence of the Article 133 Committee and the other committees involved in the negotiation of the ACTA;
- to ensure a continuous and transparent public consultation process, and to support the benefits of such a process with all the negotiating countries, and to ensure that the Parliament is regularly and thoroughly informed about the state of play of the negotiations.

MEPs note with regret that IPR protection in Turkey does not yet meet EU standards and therefore needs to be reviewed. They point out that

Turkey will only become a credible candidate for accession when it is in a position to take on the Community acquis and guarantee full respect for IPR within its boundaries.

EU-China relations: given that 60% of the counterfeit goods seized by the customs authorities of the EU are produced in China, MEPs ask the Commission, together with the Chinese authorities, to present an action plan to fight counterfeiting as soon as possible. The Chinese authorities are requested to step up their efforts and take legal action with renewed energy against those who violate IPRs.

External support measures in the fight against counterfeiting: MEPs recommend that an effective monitoring mechanism be introduced with regard to possible infringements of IPRs that are protected under the various agreements, coupled with trade incentive tools as part of a specific commitment to the fight against counterfeiting and piracy. They point out that the Generalised System of Preferences (GSP) regulation also provides for the possibility of temporarily suspending preferences for those partners which implement unfair trading practices. In the event of particularly serious violations of intellectual property, such as cases constituting a serious threat to safety and public health, the use of such a deterrent should be taken into due consideration by the Commission. The Trade Barriers Regulation can also provide important assistance to European companies suffering from problems of third-country market access in relation to intellectual property (IP) infringements. Improved cooperation is needed between the European Union and the Member States in third countries to guarantee more effective exchanges of information, better use of available resources and a greater impact on measures to combat counterfeiting as regards both political-diplomatic action and more strictly technical aspects.

The Commission is called upon to make the ?market access team? in the EU delegations a tangible point of reference for Community companies (in particular SMEs) complaining of IP infringements.

Regulatory and organisational issues: MEPs note the Commission?s commitment to consolidate IP in the European Union and call for greater commitment in the suppression of counterfeiting and the harmonisation of existing laws in the Member States as well as the definitions of 'counterfeiting' and 'piracy'.

Member States are called upon to provide consumers with sufficient information on the dangers of counterfeiting and piracy, in particular the considerable health and safety risks which counterfeit products, including medicines, pose to consumers. The Commission, for its part, is called upon to investigate the health and safety risks related to counterfeiting in order to assess whether further measures are needed as well as to agree minimum sanctions in European criminal law for serious infringements of intellectual property rights.

MEPs stress the need to develop appropriate ongoing training courses for customs staff, magistrates and other professionals concerned and to encourage the Member States to set up specialised anti-counterfeiting teams. The report recommends further improvement and better coordination of customs procedures in the European Union in order substantially to restrict access of counterfeit and pirated products to the single market. MEPs take the view that a more effective suppression of counterfeiting should take due consideration of the prominent role that the Internet has acquired in marketing and promoting counterfeit and pirated products. They call also on the Commission to submit a proposal to Parliament and the Council to provide the European Union and its Member states with EU-level qualitative and statistical data on counterfeiting, in particular via the Internet. The Commission is requested to take account of the specific aspects of the use of the Internet and to measure its impact on the Member States' economies by developing statistical tools that can facilitate a coordinated response. A helpdesk for SMEs should be set up to give technical assistance on the procedures for dealing with counterfeit goods.

MEPs call on Member States to step up awareness-raising and information in the fight against counterfeiting and piracy in tourist areas and in trade fairs and exhibitions. Companies should be encouraged to protect their services and products by registering trademarks, designs, patents and so on in order to be able to better enforce their intellectual property rights.

According to the report, a scoreboard should be developed to measure Member States' customs performance in order to further the fight against counterfeiting, and to put in place a rapid information exchange network on counterfeit products, based on national contact points and modern information exchange tools. A common approach to the destruction of counterfeit goods.

The role of the European Parliament: MEPs urge the Council and the Commission to enable the Parliament to play a more central role in the fight against counterfeiting. They consider it particularly advisable for the EU to promote its political presence in specialist international meetings such as the Global Anti-counterfeiting and Piracy Congress, and in the international organisations involved in IP protection. Parliament calls on the Commission and Council to keep it fully informed and to involve it in all relevant initiatives. MEPs consider that ACTA should be ratified by the European Parliament under the assent procedure.