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on the impact of counterfeiting on international trade
(2008/2133(INI))

Committee on International Trade

Rapporteur: Gianluca Susta

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the impact of counterfeiting on international trade (2008/2133(INI))

The European Parliament,

- having regard to the 2007 report by the OECD entitled ‘The economic impact of counterfeiting and piracy’,
- having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled ‘Implementing the Community Lisbon programme – a modern SME policy for growth and employment’ (COM(2005)0551),
- having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled ‘Global Europe: competing in the world – A Contribution to the EU's Growth and Jobs Strategy’ (COM(2006)0567),
- having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled ‘Global Europe: a stronger partnership to deliver market access for European exporters’ (COM(2007)0183),
- having regard to its resolution of 19 February 2008 on the EU's Strategy to deliver market access for European companies¹,
- having regard to its resolution of 22 May 2007 on Global Europe — external aspects of competitiveness²,
- having regard to its resolution of 5 June 2008 on implementing trade policy through efficient import and export rules and procedures³,
- having regard to its resolution of 1 June 2006 on EU-US transatlantic economic relations⁴,
- having regard to its resolution of 12 October 2006 on economic and trade relations between the EU and Mercosur with a view to the conclusion of an Interregional Association Agreement⁵,
- having regard to its resolution of 13 December 2007 on economic and trade relations with Korea⁶,

¹ Texts adopted, P6_TA(2008)0053

² OJ C 102 E, 24.4.2008, p. 128

³ Texts adopted, P6_TA(2008)0247

⁴ OJ C 298 E, 8.12.2006, p. 235

⁵ OJ C 308 E, 16.12.2006, p. 182

⁶ Texts adopted, P6_TA(2007)0629

- having regard to its resolution of 8 May 2008 on Trade and Economic Relations with the countries of South East Asia (ASEAN)¹,
 - having regard to its resolution of 13 October 2005 on prospects for trade relations between the EU and China²,
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled ‘EU – China: Closer partners, growing responsibilities’ (COM(2006)0631) and the document accompanying it, entitled ‘Closer Partners, Growing Responsibilities – a policy paper on EU-China trade and investment: Competition and Partnership’ (COM(2006)0632),
 - having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (Trade Barriers Regulation (TBR)),
 - having regard to the Communication from the Commission to the Council and the European Parliament entitled ‘Programme for action: Accelerated action on HIV/AIDS, malaria and tuberculosis in the context of poverty reduction’ (COM(2001)0096),
 - having regard to the Communication from the Commission to the Council and the European Parliament entitled ‘Update on the EC Programme for Action – Accelerated action on HIV/AIDS, malaria and tuberculosis in the context of poverty reduction’ (COM(2003)0093),
 - having regard to the Communication from the Commission to the Council and the European Parliament entitled ‘A Coherent European Policy Framework for External Action to Confront HIV/AIDS, Malaria and Tuberculosis’ (COM(2004)0726),
 - having regard to Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems,
 - having regard to Council Regulation (EC) No 980/2005 of 27 June 2005 applying a scheme of generalised tariff preferences,
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinions of the Committee on Legal Affairs and the Committee on the Internal Market and Consumer Protection (A6-0000/2008),
- A. whereas it is necessary to combat counterfeiting effectively in order to achieve the objectives of the new Lisbon agenda, with regard to both its internal and external aspects, as stated by the Commission in its Communication entitled ‘Global Europe: a stronger

¹ Texts adopted, P6_TA(2008)0195

² OJ C 233 E, 28.9.2006, p. 103

partnership to deliver market access for European exporters' (COM(2007)0183),

- B. whereas 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,
- C. whereas serious infringements of intellectual property rights (IPR) are non-tariff trade barriers which make access to third-country markets more difficult and costly, especially for small and medium-sized enterprises (SMEs) of limited resources and means,
- D. whereas European competitiveness is traditionally linked to the quality of the workforce and, increasingly, especially for SMEs, to research, development, innovation and the relevant IPRs,
- E. whereas IPRs, including geographical indications and denominations of origin, are not always protected effectively by the European Union's trading partners,
- F. whereas in 2007 the amount of goods seized by the customs authorities of the European Union that were in breach of 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,
- G. whereas 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,
- H. whereas counterfeiting causes serious damage to the environment, both because of the inadequacy of the quality standards of counterfeit goods and the high costs of disposing of and destroying them,
- I. whereas the single market ensures that European consumers can choose freely, transparently and safely which products to buy, and counterfeiting, unless appropriately curbed, can not only undermine the principle of confidence on which the entire system is based but can also pose serious risks to safety, health, and in extreme cases, the very lives of consumers and it is thus necessary to better protect their rights,
- J. whereas the ongoing differences between the laws of the Member States on IPRs, particularly with regard to the criminal measures aimed at ensuring that they are respected, weaken the European Union's negotiating position and may undermine the efforts hitherto made to suppress counterfeiting more effectively internationally,
- K. whereas in 2007 the European Union, Japan and the United States announced the opening of negotiations with a view to a new multilateral agreement designed to strengthen the enforcement of IPRs and suppress counterfeiting and piracy (Anti-Counterfeiting Trade Agreement - ACTA),
- L. whereas a distinction needs to be drawn between generic medicines, the circulation of and

trading in which should be encouraged, both in the EU and in developing countries, and counterfeit medicines, which, on the one hand, are dangerous for public health and, on the other, cause substantial economic losses to companies in the sector and may delay the development of new discoveries without benefiting the populations of the least developed countries,

The multilateral framework

1. Takes the view that the WTO system has ensured that IPRs are more widely recognised internationally, providing for minimum 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;
2. Calls 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;
3. Calls on the Commission to make every effort to strengthen and broaden the scope of the TRIPS agreement in order to extend it to export, transit and transshipment operations, as well as to all IPRs which have so far been excluded from the agreement, constantly 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;
4. Calls on the Commission and the Member States to develop specific measures, backed up by appropriate financial coverage, in favour of developing countries, in order to avert the risks relating to potentially dangerous counterfeit products, to the deterrent effect on FDI and to criminal and terrorist activities in those countries;
5. Points out that in several emerging economies, the production of counterfeit and pirated goods has reached alarming levels; whilst welcoming the cooperation initiatives hitherto implemented, is of the view that special measures are required in order to strengthen coordination between customs, judicial and police authorities and to encourage the harmonisation of the laws of these countries with those of the European Union;
6. Is convinced that to step up the fight against counterfeiting, more regular and targeted use should also be made of the WTO's Dispute Settlement Body, which, together with the Community and national courts, can provide better protection of European industry and consumers by consolidating a case-law which enhances the substance and scope of the TRIPS agreement;

ACTA and other bilateral and regional EU initiatives

7. 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;

8. Calls on the Commission and the Member States to make all appropriate efforts to achieve a swift and satisfactory conclusion to the ACTA agreement; takes the view that not only is the entry into force of the agreement an essential international benchmark, but that it can ensure that counterfeiting is suppressed more effectively and provide an important tool for putting pressure on non-signatory third countries;
9. Welcomes the growing interest shown by a number of WTO member countries in the ACTA and hopes that the agreement can be signed also by China and other emerging countries, the economies of which are more directly concerned by counterfeiting;

External support measures in the fight against counterfeiting

10. Recommends 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, such as including developing countries in the Generalised System of Preferences (GSP) or granting special treatment to emerging countries in the application of trade defence measures;
11. Points out that the GSP regulation also provides for the possibility of temporarily suspending preferences for those partners which implement unfair trading practices; takes the view that in particularly serious cases, the use of such a deterrent should be taken into due consideration by the Commission;
12. Is of the view that the TBR can provide important assistance to European companies suffering from problems of third-country market access in relation to intellectual property (IP) infringements and calls on the Commission to encourage and facilitate its use, especially for SMEs;
13. Calls on the Commission to redefine without delay its priorities regarding the human resources assigned to European Union delegations, with the aim of ensuring that a sufficient number of officials are specifically involved in the fight against counterfeiting; these resources, ideally to be incorporated into a 'market access team', should, in association with the diplomatic missions of the Member States, be responsible for projecting Community anti-counterfeiting measures more effectively and improving contact with the relevant local authorities, as well as being a tangible point of reference for Community companies (in particular SMEs) complaining of IP infringements;

Regulatory and organisational issues

14. Notes the Commission's commitment to consolidating IP in the European Union and calls for greater commitment in the suppression of counterfeiting and the harmonisation of existing laws in the Member States;
15. Stresses the need for improved coordination within the Commission between departments dealing with the suppression of counterfeiting and for better dissemination of the Community initiatives the Commission adopts in this regard;

16. Regrets the failure of the Council to adopt the mark of origin legislation (*made in.....*), which would allow better traceability and detectability of the origin of imported products and hopes that the obstacles which have so far prevented it from entering into force may be overcome once and for all;
17. Considers that the establishment of a single European authority responsible for coordinating the fight against counterfeiting and piracy cannot be postponed; such an authority should be able to ensure better organisation of the various players at European level and create synergies with the private sector and the authorities of the Member States responsible for combating counterfeiting; takes the view that this authority needs to be established in order to increase the authoritativeness of the EU position internationally and the effectiveness of its anti-counterfeiting action;
18. 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; takes 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;
19. Considers it vital that European industry should not withhold its support and assistance for the initiatives to be taken by the European institutions; considers it especially vital that SMEs are put in a position to be able to defend their rights effectively, especially with regard to IPR infringements in third countries;

Final considerations

20. Calls on the Commission, in association with the Council and the Member States, to frame a policy that is clear, structured and ambitious, which, alongside internal customs and criminal measures, should coordinate and guide the ‘external’ actions of the European Union and its Member States in the fight against counterfeiting and piracy;
21. Stresses the need for Parliament henceforth to be given a more central role in the fight against counterfeiting; considers it particularly advisable for its political presence to be promoted in specialist international meetings such as the Global Anti-counterfeiting and Piracy Congress, and in the international organisations involved in IP protection;
22. Calls on the Commission and Council to keep it fully informed and to involve it in all relevant initiatives;

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23. Instructs its President to forward this resolution to the Council and Commission, and to the governments and parliaments of the Member States and candidate countries.

EXPLANATORY STATEMENT

The 2006 Commission Communication 'Global Europe' acknowledged that, as far as multilateral and bilateral measures were concerned, the external aspects of European competitiveness needed to be strengthened and fresh momentum given to the fight against counterfeiting in third countries.

There is a considerable amount at stake. The counterfeiting market is worth approximately €500 billion, accounting for some 7-10% of world trade. The European economy has specialised in high-end, high value-added products, often protected by IPRs. The defence of IP is therefore an essential tool for bolstering the external competitiveness of European industry and has an equally important contribution to make to the success of the Lisbon strategy.

It would, however, be misleading to believe that new anti-counterfeiting measures are being implemented in the sole interest of Community industry. In addition to the serious economic damage caused to companies by counterfeiting and piracy, these unlawful practices are causing the loss of hundreds of thousands of skilled, well-paid jobs in Europe (where an estimated 200 000 jobs have been lost) and in other parts of the world each year and can often endanger consumers' health, fund criminal and terrorist organisations and cause serious damage to the environment.

Counterfeiting is a multiform, diversified phenomenon which, with varying degrees of severity, affects nearly all economic sectors. The times of crude imitations of easily recognisable luxury products are now over. Over the past few years the counterfeiting and piracy industry has been booming and now devotes itself to producing toys, clothing, computer programmes, medicines, cosmetics, foods, cigarettes and spare parts for cars and aircraft.

Not all consumers realise that by purchasing products of dubious origin they are committing an offence and are helping to support parallel economic circuits dominated by organised crime. This Parliament has already expressed its views on the matter, stressing that personal use that is not for profit should be distinguished from the fraudulent and intentional marketing of counterfeit and pirated products. Care should certainly be taken to make such a distinction, but awareness-raising campaigns should also be held, to give consumers a better understanding of the risks involved in their *unwise* purchases.

Counterfeiting often assumes underhand and dangerous forms. For instance, it is calculated that 10% of medicines are counterfeit. These products, like cosmetics, may contain potentially harmful substances which can cause serious damage to the health of unaware users. One example of this is the antifreeze cough mixture which caused more than 130 deaths in Panama in 2006. Likewise, the flourishing market in fake quality food products (including wines and spirits), in addition to causing very serious damage to European products of maximum excellence, may pose a worrying threat to consumers, especially in markets that are different from the market of origin of the adulterated product. Combating counterfeiting thus means ensuring that consumers can choose what they buy freely and in total safety.

Developing countries are the No 1 victims of counterfeiting and rarely have appropriate instruments with which successfully to combat this scourge. The rapporteur takes the view

that specific measures need to be taken to help them combat this phenomenon effectively and prevent the establishment of ‘free zones’ controlled by organised crime. In particular, the suppression of the counterfeiting of food products and medicines in developing countries remains one of the priorities of the EU’s external anti-counterfeiting action.

The aim of this report is to put forward a concrete, consistent proposal for a coordinated, consistent European policy dealing with the *external aspects* of the fight against counterfeiting. The fight against counterfeiting should become one of the EU’s priorities and its implications should be taken into due consideration when framing the EU’s trade policy for the next decade.

Modernising the TRIPS agreement

When it entered into force, the TRIPS agreement was a firm step towards a world regulation of IP, but the results have not always lived up to expectations, since many WTO members have not been able, or have not wanted, to ensure that it was fully enforced. The Commission should therefore promote appropriate diplomatic initiatives with a view to ensuring that the minimum standards set out in the TRIPS agreement are correctly applied by all WTO members.

On the other hand, the agreement in question is not perfect, and some parts of it should be revised. In particular, its scope should be extended to export, transit and transshipment operations as well as to other IP infringements.

In the event of serious breaches of the TRIPS agreement, the EU should not hesitate to take its case to the WTO’s Dispute Settlement Body, both to ensure that the European parties concerned are defended and to build up a body of case-law to clarify the content of the agreement, thereby making it easier and more effective to implement.

The rapporteur is also convinced that the use of the TBR should be encouraged and facilitated for European companies complaining of problems of access to third-country markets owing to an illegitimate and in any case improper use of their IP rights by local operators.

ACTA and other bilateral and regional EU initiatives

However much the multilateral WTO framework remains the top priority for the EU, it is clear that without any further bilateral or multilateral initiatives such as the ACTA agreement, it will be impossible to combat counterfeiting effectively at the international level. In this regard, Parliament expects to be kept duly informed and to be able to make its own contribution to the agreement in question before it is formally submitted.

The proposal concerning the ACTA agreement stemmed from the need to move beyond the TRIPS agreement and to make the fight against counterfeiting more effective and consistent. From this point of view, the fact that the industrialised countries that have been the most penalised by counterfeiting, such as the EU, USA and Japan, have decided to coordinate their efforts, is certainly to be welcomed. The process is still at the initial stage but care will need to be taken to ensure that it does not overlap with the TRIPS agreement and that the agreement’s ultimate objectives are sufficiently clear and realistic.

In addition to ACTA, the rapporteur takes the view that the Commission should include an IPR protection clause (providing for an efficient dispute settlement system) in all the new free trade agreements to be negotiated over the next few years.

Full compliance with the obligations of TRIPS and other bilateral and multilateral agreements will require a substantial economic and organisational effort on the part of third countries, especially developing countries. The rapporteur believes that the EU should take charge of this problem, at least in part, by providing those states which so request, and which show they are committed to the fight against counterfeiting, with appropriate economic and technical support, encouraging staff training and adopting, where possible, Community customs procedures.

A special anti-counterfeiting effort should be made in countries through which goods transit and against those who use 'factory ships' located in extra-territorial waters.

'Made in...' and traceability of imported products

If adopted, the proposal for a Council Regulation¹ introducing compulsory indication of the country of origin of certain products imported from third countries in the EU will not only increase the transparency of the origin of certain categories of product, such as textiles, which are often counterfeited, but will also make an important contribution to the fight against counterfeiting. The rapporteur thus hopes that the incomprehensible divisions which have hitherto slowed down the procedure relating to this proposal may be overcome and that it may be swiftly adopted.

At the same time it would also be advisable to look at, together with the industrial sectors involved, methods whereby the authenticity of products from third countries can be easily identified by customs operators, but also by final consumers.

Regulatory and organisational issues

The rapporteur takes the view that better coordination at Community level is necessary in order to achieve major results in the external fight against counterfeiting.

The establishment of a single European authority responsible for combating counterfeiting and able to coordinate both the efforts of the Member States and those of the various Commission departments can no longer be postponed. This new authority should be guaranteed sufficient resources and powers to be able to fulfil its mandate whilst respecting the competences of the Member States. The Commission should also ensure that, internally, the various departments responsible for this important topic work in a coordinated, harmonious manner.

One of the aspects of the fight against counterfeiting on which both the Member States and the Commission should insist, is the defence of SMEs, both in Europe and in third countries. The role of companies is vital for the success of the anti-counterfeiting strategy, and industry, as recently pointed out by the Commission itself, has to play its part; however, it is inconceivable that the luxury multinationals should be placed on the same footing as

¹ Ref. 2005/0254 (ACC)

small-scale producers who have become leaders in their product sector. SMEs therefore need to be helped to defend themselves as best they can against this serious problem which is damaging them considerably; more generally speaking, public-private cooperation systems that are more efficient and less costly for business should also be set up .

The saturation of traditional markets and the opening up of new ones, such as those in the emerging countries, also calls for a new operational strategy which does not confine itself to prosecuting counterfeiting in Europe but which tackles the problem in those areas in which counterfeiting is more deeply rooted, taking action also in third countries which are often the recipients of counterfeit European goods produced elsewhere.

Moreover, the rapporteur hopes that customs procedures may be improved and increasingly harmonised within the EU and that a system of criminal laws common to all Member States may be established. A system of strong, universally approved common rules in the EU must be a prerequisite for combating counterfeiting and piracy outside Europe.

The role of the European Parliament

Parliament has an important role to play in the fight against counterfeiting, especially in the light of the new powers to be conferred upon it if the Treaty of Lisbon enters into force. It would also be appropriate, in cooperation with the other parliamentary committees concerned, to promote an annual forum on the topic, place greater emphasis on the issue in the EU's bilateral (first and foremost with the US Congress) or multilateral (WTO Assembly) relations and send a parliamentary delegation to the Global Congress Combating Counterfeiting.