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## **REPORT**

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

Committee on International Trade

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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 of 10 November 2005 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 of 4 October 2006 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 of 18 April 2007 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 companies<sup>1</sup>,
- having regard to its resolution of 22 May 2007 on Global Europe – external aspects of competitiveness<sup>2</sup>,
- having regard to its resolution of 5 June 2008 on implementing trade policy through efficient import and export rules and procedures<sup>3</sup>,
- having regard to its resolution of 1 June 2006 on EU-US transatlantic economic relations<sup>4</sup>,
- 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 Agreement<sup>5</sup>,
- having regard to its resolution of 13 December 2007 on economic and trade relations with Korea<sup>6</sup>,
- having regard to its resolution of 8 May 2008 on Trade and Economic Relations with the

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<sup>1</sup> Texts adopted, P6\_TA(2008)0053.

<sup>2</sup> OJ C 102 E, 24.4.2008, p. 128.

<sup>3</sup> Texts adopted, P6\_TA(2008)0247.

<sup>4</sup> OJ C 298 E, 8.12.2006, p. 235.

<sup>5</sup> OJ C 308 E, 16.12.2006, p. 182.

<sup>6</sup> Texts adopted, P6\_TA(2007)0629.

countries of South East Asia (ASEAN)<sup>1</sup>,

- having regard to its resolution of 13 October 2005 on prospects for trade relations between the EU and China<sup>2</sup>,
- having regard to the Communication from the Commission of 25 October 2006 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 of 16 July 2008 entitled "An Industrial Property Rights Strategy for Europe" (COM(2008)0465),
- having regard to the Communication from the Commission of 21 February 2001 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 of 26 February 2006 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 of 26 October 2004 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 the report of the Commission of 19 May 2008 on community customs activities on counterfeit and piracy,
- having regard to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)<sup>3</sup>,

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<sup>1</sup> Texts adopted, P6\_TA(2008)0195.

<sup>2</sup> OJ C 233 E, 28.9.2006, p. 103.

<sup>3</sup> OJ L 145, 4.6.2008, p. 1.

- having regard to the Communication from the Commission of 1 April 2008 entitled "Strategy for the evolution of the Customs Union" (COM(2008)0169),
  - having regard to the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2006)0168),
  - having regard to its resolution of 19 June 2008 on the fortieth anniversary of the Customs Union<sup>1</sup>,
  - having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>2</sup>,
  - having regard to Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>3</sup>,
  - 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 the Internal Market and Consumer Protection and the Committee on Legal Affairs (A6-0447/2008),
- 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 of 18 April 2007 entitled "Global Europe: a stronger 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 the EU economy has specialised in high value added, high-quality products, often protected by trademarks, patents or geographic indications, which, by their very nature, are among the most likely to be counterfeited,
- D. 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,
- E. 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,
- F. whereas IPRs, including geographical indications and denominations of origin, are not

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<sup>1</sup> Texts Adopted, P6\_TA(2008)0305.

<sup>2</sup> OJ L 157, 30.4.2004, p. 45.

<sup>3</sup> OJ L 196, 2.8.2003, p. 7.

always protected effectively by the European Union's trading partners,

- G. whereas there is a large and increasing number of types of counterfeit products, no longer confined to luxury and high-quality goods but also including commonly used products, such as toys, medicines, cosmetics and food,
- H. whereas a recent survey by the Organisation for Economic Co-operation and Development (OECD) estimated that international trade relating to IPR infringements amounted to as much as EUR 150 billion in 2005, to which should be added the value of national transactions and counterfeit and pirated products that are distributed through the internet,
- I. 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,
- J. 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,
- K. whereas the 2007 report by the Organisation for Economic Cooperation and Development (OECD) entitled 'The economic impact of counterfeiting and piracy', and the upcoming Phase II report by the OECD on 'Piracy of digital content', emphasise the global scale, rapid growth and detrimental economic impact of digital piracy on rights holders,
- L. 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,
- M. whereas access to procedures for combating counterfeit goods is complicated, costly and time-consuming, especially for SMEs,
- N. 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,
- O. whereas initiatives to raise awareness among consumers about risks to their health and safety and, in general, about the consequences of buying counterfeit goods are an effective tool in combating counterfeiting,
- P. whereas more repressive action should be taken against counterfeiters of products that have a direct impact on public health,
- Q. 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,

- R. whereas the simplified procedure laid down in Article 11 of Council Regulation (EC) No. 1383/2003 of 21 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>1</sup> in member states such as Portugal, Greece, Hungary, the Netherlands and Lithuania which allows for the destruction of large quantities of counterfeit goods in a short period of time and with relative low costs, is very successful,
- S. whereas the 2006 St Petersburg summit recognised the global nature of the counterfeiting and piracy problem and stressed the need to improve cooperation between G8 countries, third countries and the competent international institutions,
- T. whereas the subsequent G8 summit in Heiligendamm set up an IPR Task Force to combat counterfeiting and piracy as part of the "Heiligendamm Process"<sup>2</sup>,
- U. 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),
- V. whereas a favourable conclusion of the ACTA Agreement will make it possible to establish common standards for civil, criminal and administrative protection, improved interinstitutional cooperation and cooperation with the private sector, and the incorporation of technical assistance, with a view to making respect for IPRs simpler, safer and less costly,
- W. 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; whereas, moreover, counterfeit medicines account for only part of illegal medicines,
- X. whereas, as regards products having direct impact on public health, internet and parallel trade distribution networks contribute greatly to the spread of counterfeit products that are dangerous to public health,
- Y. whereas the European Union is pursuing ongoing efforts to harmonise IPR enforcement measures, notably with a proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2005)0276), and this process should not be circumvented by trade negotiations which are outside the scope of the normal EU decision-making processes,

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<sup>1</sup> OJ L 196, 2.8.2003, p.7.

<sup>2</sup> Summit Declaration, Growth and Responsibility in the World Economy, 7 June 2007, Summit G8 Heiligendamm.

- Z. whereas it is also crucial to ensure that the development of IPR enforcement measures is accomplished in a manner that does not impede innovation or competition, undermine IPR limitations and exceptions or personal data, restrict the free flow of information, or unduly burden legitimate commerce,
- AA. whereas the European Union has demonstrated its commitment to effective and balanced enforcement of IPR by adopting a set of directives in this field following detailed scrutiny by the European Parliament and the Council over many years,
- AB. whereas it is fundamentally important, when considering legal measures, to recognise the substantive difference between intellectual and material property rights, and accordingly between infringement of rights and theft,
- AC. whereas all intellectual property infringements are damaging to trade and business but commercial scale infringements have additional and widespread effects,
- AD. whereas, in the case of patents on pharmaceutical products, whilst infringements of patents are settled case-by-case on the basis of substantive arguments made in civil proceedings on the grounds of a patent infringement, infringements of copyright and trademarks constitute intentional offences,

### ***The multilateral framework***

1. Takes the view that the World 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;
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. Takes the view that 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;
4. Calls on the Commission to bring forward proposals to the European Parliament to ensure that export, transit and transshipment 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;
5. Welcomes the progress achieved by the European Union in technical assistance programmes which have helped to strengthen IPRs in emerging and developing countries, and stresses the importance of continuing with such programmes, in view of the beneficial

objective which they can achieve in terms of sustainable economic development and their important role in combating counterfeiting;

6. Calls on the Commission and the Member States 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;
7. Supports the solutions put forward at the Twelfth United Nations Conference on Trade and Development Conference, within the Creative Africa Initiative, which consider the creative industries to be an essential factor in the growth of underdeveloped countries, and reaffirm the vital role of IP for the sustainable development of such regions;
8. Calls on the Commission and the Member States to propose and support the drafting of a protocol on counterfeiting, in addition to the Palermo International Convention on organised crime;
9. 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 with the countries concerned and to encourage the harmonisation of the laws of these countries with those of the European Union;
10. Calls on the Commission to introduce, in the same line of Article 3 (2)<sup>1</sup> 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<sup>2</sup>, safeguards at international level in order to guarantee that any extra patent enforcement measures are not abused to hinder legitimate trade;
11. Encourages the Commission and the Member States 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;
12. Is convinced that in order 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;
13. Reaffirms that any harmonisation of substantive law must respect national sovereignty and international treaties in this area;

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<sup>1</sup> Article 3 (2) states that "Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse."

<sup>2</sup> OJ L 157, 30.4.2004, p. 45.

***Anti-Counterfeiting Trade Agreement (ACTA) and other bilateral and regional EU initiatives***

14. 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;
15. Calls on the Commission and the Member States to negotiate ACTA 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; takes the view that the social impact of the agreement as well as the impact on civil liberties must be assessed; supports 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;
16. Considers that it is not yet certain whether the EC Treaty provides a legal basis for Community measures prescribing the type and level of criminal penalties and that, as a consequence, the Commission may not have competence to negotiate on behalf of the Community an international agreement which specifies the nature and level of criminal-law measures to be taken against trademark and copyright violators;
17. Stresses that in all envisaged IP enforcement agreements personal use, that is not for profit, must be distinguished from the fraudulent and intentional marketing of counterfeit and pirated goods;
18. Calls on the Commission to negotiate with third countries on the establishment of task forces to combat counterfeiting;
19. Asks the Commission to ensure that ACTA will not grant public authorities access to private computers and other electronic devices;
20. Welcomes the growing interest shown by a number of WTO countries in the ACTA, believes that efforts should be made to include emerging economies such as China, India, Brazil as well as regional trade blocs such as Mercosur, CARICOM and ASEAN, in order for them to take part in the negotiations of the agreement, inviting them from now to commit themselves to guarantee IPRs' respect in their territories;
21. Calls on the Commission to avoid the danger of contradictions and overlap between the ACTA, the TRIPS agreement and other international IPR treaties;
22. Calls on the Commission 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;
23. Calls on the Commission to ensure that ACTA is not used as a vehicle for modifying the existing European IPR enforcement framework, but fully reflects the balance established

by the different directives adopted by the European Parliament and Council in this field, and notably the provision of Recital 2 of the Directive 2004/48/EC;

24. Calls on the Commission and the Presidency to clarify the role and competence of the Article 133 Committee and the other committees involved in the negotiation of the ACTA;
25. Believes that the Commission should take into account certain strong criticism of ACTA in its ongoing negotiations, namely that it could allow trademark and copyright holders to intrude on the privacy of alleged infringers without due legal process, that it could further criminalise non commercial copyright and trademark infringements, that it could reinforce Digital Rights Management (DRM) technologies at the cost of 'fair use' rights, that it could establish a dispute settlement procedure outside existing WTO structures and lastly that it could force all signatories to cover the cost of enforcement of copyright and trademark infringements;
26. In this context, calls on the Commission 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;
27. Recalls that the EC Treaty includes derogations where the negotiation and conclusion of agreements in the field of commercial aspects of intellectual property relates to trade in cultural and audiovisual services; points out that, in such instances, the negotiation and conclusion of agreements falls within the shared competence of the Community and its Member States; further points out that, in addition to a Community decision taken in accordance with the relevant provisions of the EC Treaty, the negotiation of such agreements requires the common accord of the Member States and agreements negotiated in this way must be concluded jointly by the Community and the Member States;
28. Reminds the Commission of, within the framework of ACTA negotiations, Article 8 of the Charter of Fundamental Rights of the European Union, which concerns the protection of personal data, and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>1</sup>;
29. Takes the view that the public interest in disclosure of ACTA preparatory drafts, including progress reports, and of the Commission's negotiating mandate should not be overridden by Article 4 of Regulation (EC) No 1049/2001<sup>2</sup>, and urges the Council to enforce Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents, provided that the necessary security measures are taken as required by data-protection law;
30. Notes with regret that IPR protection in Turkey does not yet meet EU standards and therefore needs to be reviewed; points out that Turkey will only become a credible

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

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***

31. Calls on the Chinese authorities to step up their efforts and take legal action with renewed energy against those who violate IPRs and, in this connection, welcomes the change of attitude on the part of judicial bodies which recently recognised the IPR entitlements of EU citizens in China and sentenced local companies which had infringed those rights;
32. Reaffirms the need to step up cooperation with the Chinese customs authorities and to guarantee assistance and support from corresponding European administrative services;
33. Stresses the fact that 60 % of the counterfeit goods seized by the customs authorities of the EU are produced in China; asks the Commission, together with the Chinese authorities, to present an action plan to fight counterfeiting as soon as possible;

### ***External support measures in the fight against counterfeiting***

34. 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;
35. 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 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;
36. 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;
37. Takes the view that improved cooperation between the European Union and the Member States in third countries can 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;
38. Calls on the Commission 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***

39. 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;

40. Notes that there is no harmonised definition in the European Union of 'counterfeiting' and 'piracy' and that the Member States' definitions differ;
41. Notes the worrying spread of counterfeiting and piracy, in particular, in a globalised economy, and its serious implications for the competitiveness of the European Union and its businesses, creators and consumers; calls therefore on the Member States 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;
42. Asks the Commission to specifically investigate the health and safety risks related to counterfeiting in order to assess whether further measures are needed;
43. Calls on the Commission to make all efforts to agree minimum sanctions in European criminal law for serious infringements of intellectual property rights;
44. Believes that a harmonisation of existing national anti-counterfeiting legislation is necessary to ensure effective and consistent application of the future ACTA agreement;
45. 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, given that the fragmentation of sanction arrangements is detrimental to the internal market and weakens the European Union in its trade negotiations; stresses also that the private and public sectors should extend their cooperation to ensure that measures to combat counterfeiting are more active, dynamic and effective;
46. Stresses 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;
47. Notes the acknowledgement by the Commission, in its July 2007 White Paper on Sport, that the economic viability of exploiting sports rights is dependent on the availability of effective means of protecting against the activities of IP infringers at national and international levels and calls for the owners of sports' rights to be taken into account in any action to combat counterfeiting and digital piracy;
48. 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; calls 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;
49. Calls on the Commission to take account of the specific aspects of the use of the Internet as a channel for distributing counterfeit products and to measure its impact on the Member States' economies by developing statistical tools that can facilitate a coordinated response;

50. Asks the Commission to set up or facilitate a helpdesk for SMEs, preferably integrated with other helpdesk facilities, to give technical assistance to SMEs on the procedures for dealing with counterfeit goods;
51. 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;
52. Asks the Commission and the Member States to encourage initiatives to raise consumer awareness of the consequences of buying counterfeit goods; stresses the important role the business sector has to play in such initiatives;
53. Considers that, for traceability purposes, steps should be taken to encourage measures taken by industry to use modern technologies to distinguish more effectively between original products and counterfeit products, and calls on the Commission to take the necessary steps to promote and establish such constructive steps on a permanent basis;
54. Urges the Member States which have not yet implemented Directive 2004/48/EC to do so without delay; calls on the Member States to allow no exemptions to be made at the EU's borders, either for travellers or for businesses, since most imports of counterfeit goods are harmful;
55. Draws attention to the need to respect the four fundamental freedoms of the internal market and to improve its operation;
56. Calls on the Commission to collect data from the Member States on the damage to consumers' health which has occurred as a result of counterfeit products and on consumer complaints about counterfeit products; calls on the Commission to ensure that these data are accessible to the authorities in all Member States;
57. Insists in this connection on the need to mobilise all operators concerned to strengthen the effectiveness of instruments for combating counterfeiting and piracy in the internal market;
58. Calls on the Member States to strengthen their customs teams on their national territories and put in place a service, identifiable to third parties (including Member States, third countries, Community institutions, businesses and individuals) responsible for combating counterfeiting and providing information on this problem;
59. Reminds the Member States of the importance of having a Community patent and a jurisdictional system for patents as a way of ensuring compliance with users' intellectual property rights throughout the Union, thus permitting innovative businesses to protect their inventions as much as possible and to profit from them to a greater extent;
60. Calls on the 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;
61. Draws attention to the importance of harmonising intellectual property rights and existing

national and Community patents in combating counterfeiting, and calls on the Member States to encourage companies 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;

62. Calls on the Commission to develop a scoreboard 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;
63. Calls on the Member States to step up coordination between their customs services and to apply Community rules on customs duties uniformly throughout the Union;
64. Calls on the Member States to develop, with the Commission, a common approach to the destruction of counterfeit goods;
65. Asks the Commission to promote the implementation of the simplified procedure laid down in Article 11 of Council Regulation (EC) No. 1383/2003 of 21 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>1</sup> in all Member States;
66. Further suggests that significant aspects of counterfeiting (product imitation/trademark infringement on a commercial scale) differ from those of piracy (copyright infringement on a commercial scale), and that consideration should be given to dealing with them independently and separately, especially having regard to the urgent need to address public health and safety aspects prevalent in counterfeiting;
67. Supports, as regards the area of public health, the World Health Organisation definition of counterfeit medicine: “a medicine which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging”;
68. Highlights the importance of respecting fundamental rights such as the protection of privacy and data when taking measures to combat counterfeiting and piracy;

### ***Final considerations***

69. 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;
70. Calls on the Commission to promote measures that are complementary to legislative standards and, in particular, to promote greater European awareness on the dangers of

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<sup>1</sup> OJ L 196, 2.8.2003, p.7.

counterfeiting aimed at changing people's attitudes to counterfeiting and piracy;

71. Considers that the establishment of an international counterfeiting scoreboard should be considered by the Commission which could be modelled on the Internal Market Scoreboard and which would highlight countries that are below average in tackling the suppression of counterfeit goods;
72. Urges the Council and the Commission to enable the Parliament to play a more central role in the fight against counterfeiting; considers 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;
73. Calls on the Commission and Council to keep it fully informed and to involve it in all relevant initiatives; believes that in the spirit of the Lisbon Treaty, ACTA should be ratified by the European Parliament under the assent procedure;

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74. 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 Regulation<sup>1</sup> 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,

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<sup>1</sup> Ref. 2005/0254 (ACC)

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 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.

21.10.2008

## **OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION**

for the Committee on International Trade

on Impact on Counterfeiting on International Trade  
(2008/2133(INI))

Rapporteur: Karin Riis-Jørgensen

### **SUGGESTIONS**

The Committee on the Internal Market and Consumer Protection calls on the Committee on International Trade, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- having regard to the report of the Commission of 19 May 2008 on community customs activities on counterfeit and piracy,
- having regard to Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)<sup>1</sup>,
- having regard to the Communication from the Commission of 1 April 2008 entitled 'Strategy for the evolution of the Customs Union' (COM(2008)0169),
- having regard to the amended proposal for a directive of the European Parliament and of the Council on criminal measures aimed at ensuring the enforcement of intellectual property rights (COM(2006)0168),
- having regard to its resolution of 19 June 2008 on the fortieth anniversary of the Customs Union<sup>2</sup>,
- having regard to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>3</sup>,
- having regard to the Communication from the Commission entitled 'An Industrial

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<sup>1</sup> OJ L 145, 4.6.2008, p. 1.

<sup>2</sup> Texts Adopted, P6\_TA(2008)0305.

<sup>3</sup> OJ L 157, 30.4.2004, p. 45.

Property Rights Strategy for Europe' (COM(2008)0465),

- having regard to Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights<sup>1</sup>,
- 1. Urges the Member States which have not yet implemented Directive 2004/48/EC to do so without delay; calls on the Member States to allow no exemptions to be made at the EU's borders, either for travellers or for businesses, since most imports of counterfeit goods are harmful;
- 2. Draws attention to the need to respect the four fundamental freedoms of the internal market and to improve its operation;
- 3. Recognises the gravity and disturbing growth of the phenomenon of counterfeiting and piracy, in particular, in a globalised economy, for the Union's competitiveness and its businesses, manufacturers and consumers, and calls therefore on the Member States to ensure sufficient education of consumers about the considerable risks for health and safety of purchasing certain counterfeit products, such as cosmetics, pharmaceuticals, toys, household products and electronics;
- 4. Calls on the Commission to collect data from the Member States on the damage to consumers' health which has occurred as a result of counterfeit products and on consumer complaints about counterfeit products; calls on the Commission to ensure that these data are accessible to the authorities in all Member States;
- 5. Calls on the Member States to set up an effective network for cross-border cooperation to facilitate the rapid exchange of information;
- 6. Underlines the importance attached to protecting intellectual property rights, an element that is essential for the promotion of culture and its diversity and for the exploitation of research and innovation and the creation of European undertakings, particularly small and medium-sized enterprises, in order to support growth and employment in the Union;
- 7. Insists in this connection on the need to mobilise all operators concerned to strengthen the effectiveness of instruments for combating counterfeiting and piracy in the internal market;
- 8. Calls on the Member States to strengthen their customs teams on their national territories and put in place a service, identifiable to third parties (including Member States, third countries, Community institutions, businesses and individuals) responsible for combating counterfeiting and providing information on this problem;
- 9. Urges the Commission to step up the fight against counterfeiting and piracy by international agreements with third countries; welcomes in this respect the initiatives to strengthen cooperation with China;

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<sup>1</sup> OJ L 196, 2.8.2003, p. 7.

10. Reminds the Member States of the importance of having a Community patent and a jurisdictional system for patents as a way of ensuring compliance with users' intellectual property rights throughout the Union, thus permitting innovative businesses to protect their inventions as much as possible and to profit from them to a greater extent;
11. Calls on the 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;
12. Calls on the Member States and the Commission to inform consumers to a greater extent about the applicable rules on counterfeit goods and the consequences of using them, and, so as to encourage a change of perception by the public with regard to the phenomenon of counterfeiting and piracy, calls on the Commission to encourage action to back up legislation, and in particular to introduce a European Day to raise awareness of the dangers of counterfeiting;
13. Calls on the Commission to step up its joint customs action against counterfeiting and piracy with the authorities of the countries manufacturing counterfeit products;
14. Urges the Commission to continue to give high priority to the negotiations for golden standards for the prevention of counterfeiting and piracy under the Anti-Counterfeiting Trade Agreements (ACTA);
15. Recalls that the fragmentation of the sanction systems is harmful to the internal market and weakens the Union on the international scene, and recalls the importance of the above-mentioned amended proposal for a directive on criminal measures aimed at ensuring the enforcement of intellectual property rights;
16. Draws attention to the importance of harmonising intellectual property rights and existing national and Community patents in combating counterfeiting, and calls on the Member States to encourage companies 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;
17. Calls on the Commission to establish a European counterfeiting observatory, supported by its services, responsible for coordinating the fight against counterfeiting and piracy, so as to obtain a regular assessment of the scale of counterfeiting and piracy and a clearer analysis of those phenomena; considers that the creation of such an observatory is required in order to give greater weight to the Union on the international scene;
18. Calls on the Commission to improve coordination in combating counterfeiting and piracy and welcomes the creation of the new unit which specifically deals with the fight against counterfeiting and piracy;
19. Calls on the Commission to develop a scoreboard 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;
20. Calls on the Member States to step up coordination between their customs services and to

apply Community rules on customs duties uniformly throughout the Union;

21. Stresses the need to develop effective measures against counterfeit and pirated goods through agreements between professionals at EU level, while complying with the general principles of Community law such as the protection of personal data and the protection of property rights; is of the opinion that such measures should be addressed particularly to suppliers that increasingly - and often aggressively - use the Internet to offer fake products via 'spamming', Internet shops or auction sites, without compromising citizens' rights to Internet access;
22. Insists on the need to develop suitable and continuing training for the customs staff, judges and professionals concerned, and to encourage Member States to set up special teams to combat counterfeiting;
23. Calls on the Member States to develop, with the Commission, a common approach to the destruction of counterfeit goods.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	7.10.2008
<b>Result of final vote</b>	+: 34 -: 0 0: 0
<b>Members present for the final vote</b>	Cristian Silviu Buşoi, Charlotte Cederschiöld, Gabriela Creţu, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Hélène Goudin, Małgorzata Handzlik, Christopher Heaton-Harris, Anna Hedh, Iliana Malinova Iotova, Kurt Lechner, Toine Manders, Catiuscia Marini, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Zita Pleštinská, Karin Riis-Jørgensen, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Marianne Thyssen, Jacques Toubon, Barbara Weiler, Marian Złotea
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, Wolfgang Bulfon, Colm Burke, Giovanna Corda, Othmar Karas, José Ribeiro e Castro, Olle Schmidt

4.11.2008

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on International Trade

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

Rapporteur: Eva Lichtenberger

### **SUGGESTIONS**

The Committee on Legal Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas it is fundamentally important, when considering legal measures, to recognise the substantive difference between intellectual and material property rights, and accordingly between infringement of rights and theft,
- B. whereas all intellectual property infringements are damaging to trade and business but commercial scale infringements have additional and widespread effects,
- C. whereas small and medium-sized enterprises play a key role in the economy of the EU and whereas it is essential to recognise their legitimate concerns with regard to protection of research and innovation endeavours,
- D. whereas, in the case of patents on pharmaceutical products, whilst infringements of patents are settled case-by-case on the basis of substantive arguments made in civil proceedings on the grounds of a patent infringement, infringements of copyright and trademarks constitute intentional offences,
  - 1. Calls on the Commission and the Presidency to clarify the role and competence of the Article 133 Committee and the other committees involved in the negotiation of the Anti-Counterfeiting Trade Agreement (ACTA);
  - 2. Notes the concerns expressed about the lack of transparency involved in the negotiation of ACTA, especially with regard to its scope, the range of measures discussed, and its relation to existing international agreements on intellectual property protection, notably

the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the agreements concluded within the framework of the World Intellectual Property Organization (WIPO), and urges early formal disclosure of the work in progress;

3. Considers it important that international initiatives such as ACTA that are taken to combat counterfeiting and piracy should not lead to the adoption of more stringent patent-protection measures that go beyond the TRIPS Agreement;
4. Considers that it is not yet certain whether the EC Treaty provides a legal basis for Community measures prescribing the type and level of criminal penalties and that, in consequence, the Commission may not have competence to negotiate on behalf of the Community an international agreement which specifies the nature and level of criminal-law measures to be taken against trademark and copyright violators;
5. Recalls that the EC Treaty includes derogations where the negotiation and conclusion of agreements in the field of commercial aspects of intellectual property relates to trade in cultural and audiovisual services; points out that, in such instances, the negotiation and conclusion of agreements falls within the shared competence of the Community and its Member States; further points out that, in addition to a Community decision taken in accordance with the relevant provisions of the EC Treaty, the negotiation of such agreements requires the common accord of the Member States and agreements negotiated in this way must be concluded jointly by the Community and the Member States;
6. Asks the Commission to take duly into account the differing views of Member States in relation to criminal-law measures, with specific reference to their nature and level, and to reconsider the negotiations accordingly;
7. Considers that the terms “counterfeiting” and “piracy” do not follow a single agreed definition and are used in various ways, and so calls on the Commission to clarify those terms;
8. Observes that, while use of the two terms overlaps, counterfeiting usually applies to wilful trade mark infringement, and piracy to wilful copyright infringement, and that it would be useful to restrict these particular terms specifically to commercial scale infringements; calls on the Commission to take into account the specificities of Internet counterfeiting and to measure the impact of this practice on the Member States’ economy by developing statistical and quality tools in order to facilitate a coordinated response to this phenomenon;
9. Further suggests that significant aspects of counterfeiting (product imitation/trademark infringement on a commercial scale) differ from those of piracy (copyright infringement on a commercial scale), and that consideration should be given to dealing with them independently and separately, especially having regard to the urgent need to address public health and safety aspects prevalent in counterfeiting;
10. Highlights the importance of respecting fundamental rights such as the protection of privacy and data when taking measures to combat counterfeiting and piracy;
11. Calls on the Commission to guarantee, in line with Parliament's position and Article 61 of

the TRIPS Agreement<sup>1</sup>, that ACTA will be restricted to promoting criminal measures applicable to copyright and trademark infringements, and that such measures will not cover the area of patents;

12. Reminds the Commission, within the framework of ACTA negotiations, of Article 8 of the Charter of Fundamental Rights of the European Union, which concerns the protection of personal data, and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>2</sup>;
13. Calls on the Commission to guarantee – as is already the case under Article 3(2) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>3</sup> – that measures promoted at international level to combat counterfeiting and piracy will be applied in such a way as to avoid creating barriers to legitimate trade; considers that, in addition, safeguards should be put in place against any abuse of those measures;
14. Reiterates that in relation to international agreements, as specified in the Framework Agreement of 26 May 2005 on relations between the European Parliament and the Commission<sup>4</sup>, the Commission “shall provide early and clear information to Parliament both during the phase of preparation of the agreements and during the conduct and conclusion of international negotiations”; calls on the Commission to explain which measures it has taken in order to achieve this commitment vis-à-vis Parliament;
15. Takes the view that the public interest in disclosure of ACTA preparatory drafts, including progress reports, and of the Commission's negotiating mandate should not be overridden by Article 4 of Regulation (EC) No 1049/2001<sup>5</sup>, and urges the Council to enforce Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents, provided that the necessary security measures are taken as required by data-protection law;
16. Supports, as regards the area of public health, the WHO definition of counterfeit medicine: “a medicine which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging”.

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<sup>1</sup> Article 61 of the TRIPS Agreement: “Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale”.  
[http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_05\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_05_e.htm)

<sup>2</sup> OJ L 281, 23.11.1995, p. 31.

<sup>3</sup> OJ L 157, 30.4.2004, p. 45. Article 3(2) states that “those measures, procedures and remedies (...) shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse”.

<sup>4</sup> OJ C 117 E, 18.5.2006, p. 125.

<sup>5</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	4.11.2008
<b>Result of final vote</b>	+: 25 -: 0 0: 0
<b>Members present for the final vote</b>	Carlo Casini, Titus Corlăţean, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Othmar Karas, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Sharon Bowles, Eva Lichtenberger, Rareş-Lucian Niculescu, Georgios Papastamkos, József Szájer, Jacques Toubon, Renate Weber

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	5.11.2008
<b>Result of final vote</b>	+: 28 -: 2 0: 0
<b>Members present for the final vote</b>	Kader Arif, Daniel Caspary, Christofer Fjellner, Béla Glattfelder, Ignasi Guardans Cambó, Jacky Hénin, Caroline Lucas, Erika Mann, Helmuth Markov, David Martin, Vural Öger, Georgios Papastamkos, Godelieve Quisthoudt-Rowohl, Tokia Saïfi, Peter Šťastný, Gianluca Susta, Daniel Varela Suanzes-Carpegna, Iuliu Winkler, Corien Wortmann-Kool
<b>Substitute(s) present for the final vote</b>	Jean-Pierre Audy, Bastiaan Belder, Ole Christensen, Albert Deß, Eugenijus Maldeikis, Javier Moreno Sánchez, Sirpa Pietikäinen, Zbigniew Zaleski
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Sepp Kusstatscher, Roselyne Lefrançois, Michel Teychenné