

Impact of counterfeiting on international trade

2008/2133(INI) - 18/12/2008 - Text adopted by Parliament, single reading

The European Parliament adopted, by 309 votes to 232 with 10 abstentions, a proposal for an alternative resolution from the Greens/ALE Group on the impact of counterfeiting on international trade.

The own-initiative report had been tabled for consideration in plenary by Gianluca **SUSTA** (ALDE, IT) on behalf of the Committee on International Trade.

The resolution adopted in plenary recalls that the European Union is the second world importer of goods and services. It has been estimated that international trade relating to Intellectual Property Rights infringements amounted to as much as EUR 150 billion in 2005. It also notes an increase in counterfeit products in the cosmetics and personal hygiene, toys and medicine markets.

In this context, Parliament states that counterfeiting and piracy has alarming consequences for the EU economy and for the Community social and economic system as a whole, reducing incentives to innovate, curbing foreign direct investment (FDI), eliminating skilled jobs from industry and laying the groundwork for the development of a hidden economic system, running parallel to the legal one and controlled by organised crime.

The multilateral framework: Parliament reaffirms its support for measures provided for by the WTO as well as the Trade-Related Aspects of Intellectual Property Rights (TRIPS). It 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. The flexibilities provided for in the TRIPS agreement and confirmed in the Doha Declaration on public health, should be maintained insofar as they are aimed at ensuring a fair balance between the interests of rights' holders and those of end users. The Commission should bring forward proposals to the European Parliament to ensure that export, transit and 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.

Parliament calls on the Commission to introduce, along the same lines as set out in Directive 2004/48/EC on the enforcement of intellectual property rights (IPR), safeguards at international level in order to guarantee that any extra patent enforcement measures are not used to hinder legitimate trade. It also 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. Parliament 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 case-law which enhances the substance and scope of the TRIPS agreement.

Awareness raising: Parliament 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.

Anti-Counterfeiting Trade Agreement (ACTA) and other bilateral and regional EU initiatives: Parliament welcomes the decision taken by the European Union, Japan and the United States on the opening of negotiations with a view to a new multilateral agreement designed to strengthen the enforcement of IPRs and combat counterfeiting and piracy (Anti-Counterfeiting Trade Agreement - ACTA). It calls on the Parliament calls on the Commission and the Member States to negotiate ACTA under conditions of the utmost transparency towards EU citizens, especially with regard to the definitions of the terms "counterfeiting" and "piracy" and the criminal sanction measures foreseen. It 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. It stresses that in all intellectual property enforcement agreements foreseen, personal use, that is not for profit, must be distinguished from the fraudulent and intentional marketing of counterfeit and pirated goods.

Other targeted measures include are called for in the framework of the ACTA. Parliament considers that this agreement:

- will not grant public authorities access to private computers and other electronic devices;
- shall include emerging economies such as China, India, Brazil as well as regional trade blocs such as Mercosur, CARICOM and ASEAN;
- shall not overlap with the TRIPS agreement;
- shall only concentrates on IPR enforcement measures and not on substantive IPR issues such as the scope of protection, limitations and exceptions, secondary liability or liability of intermediaries;
- shall not be 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;
- 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 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.

In this context, Parliament calls on the Commission to ensure a continuous and transparent public consultation process, 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.

Parliament 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.

It 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 candidate for accession when it is in a position to take on the Community acquis and guarantee full respect for IPRs within its boundaries.

Other measures are also proposed in this context:

- **EU-China relations:** given that 60% of the counterfeit goods seized by the customs authorities of the EU are produced in China, Parliament asks the Commission, together with the Chinese

authorities, to present an action plan to fight counterfeiting as soon as possible. The Chinese authorities are requested to step up their efforts and take legal action with renewed energy against those who violate IPRs.

- **External support measures in the fight against counterfeiting:** Parliament 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.
- **Regulatory and organisational issues:** Parliament calls for greater commitment in the combating of counterfeiting and the harmonisation of existing laws in the Member States. The Commission, for its part, is called upon to investigate the health and safety risks related to counterfeiting in order to assess whether further measures are needed as well as to agree **minimum sanctions in European criminal law for serious infringements of intellectual property rights**. It is also necessary 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. Parliament insists on the need to mobilise all operators concerned to strengthen the effectiveness of instruments for combating counterfeiting and piracy in the internal market. It 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.

Parliament calls on the Member States to develop, with the Commission, a **common approach to the destruction of counterfeit goods**.

Parliament 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. It also calls on the Commission to submit a proposal to Parliament and the Council to provide the European Union and its Member States with EU-level statistical data on counterfeiting.

The role of the European Parliament: in conclusion, Parliament 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, should coordinate and guide the "external" actions of the European Union and its Member States in the fight against counterfeiting and piracy. It encourages the Commission to promote measures that are complementary to legislative standards and, in particular, to promote greater European awareness on the dangers of counterfeiting aimed at changing people's attitudes to counterfeiting and piracy. Parliament urges the Council and the Commission to enable the **Parliament to play a more central role in the fight against counterfeiting**. It calls on the Commission and Council to keep it fully informed and to involve it in all relevant initiatives.