

SECURING SUPPLY CHAINS AGAINST COUNTERFEIT GOODS

Communication from the United States

The following communication, dated 30 May 2012, is being circulated at the request of the delegation of the United States.

I. INTRODUCTION

1. The United States offers this submission on enforcement of intellectual property rights and supply chain management as a contribution to the constructive exchange of information, within the TRIPS Council, on the experiences of Members in implementing Part III of the TRIPS Agreement. The United States reiterates its view that enforcement-related challenges surrounding infringement of intellectual property rights are of concern to all Members. In this light, the TRIPS Council can continue to make a positive contribution to addressing these problems through a constructive exchange of views and experiences.

2. Infringement of all intellectual property rights (IPR) is a concern to the United States, but trademark counterfeiting is considered to be particularly troubling, because in addition to the resulting negative economic consequences, counterfeit goods can pose a serious threat to the health and safety of consumers. Additionally, globalization, the Internet, and advanced technology have made it easier for counterfeiters to infiltrate supply chains and increase the availability of these products in markets around the world; thus, creating an additional challenge.

3. In March of 2012, the United States Department of Commerce Economics and Statistics Administration and the United States Patent and Trademark Office published a report that described the importance of intellectual property (IP) to the United States economy.¹ The report identified 75 industries (from among 313 total) as IP-intensive, but concluded that all industry rely upon IP to some extent. Of those industries that were the most IP intensive, they directly accounted for 27.1 million American jobs or 18.8 per cent of all employment in the economy in 2010. Furthermore, the report explains that a substantial share of IP-intensive employment in the United States was in the 60 trademark-intensive industries, with 22.6 million jobs in 2010. Although this report focuses on US industry, many of the industry sectors represented in the report are global or not specific to the United States. A recent research report released by the Economy and Community Investigative Institute at Indonesia's School of Economics (LPEM-FEUI) found that Indonesia lost up to Rp43.2 trillion in indirect tax income from counterfeit product sales in 2010. [About \$4 billion lost]² In addition, the

¹ Intellectual Property and the U.S. Economy: Industries in Focus, is available at: http://www.uspto.gov/news/publications/IP_Report_March_2012.pdf.

² <http://www.thejakartapost.com/news/2011/11/04/fake-products-cost-ri-rp-432t-lost-taxes.html>.

East African Community (Burundi, Kenya, Rwanda, Uganda, and Tanzania) reports more than \$500 million in unpaid taxes as a result of counterfeit goods.³ Tanzania in particular reports losing between \$370-617 million per year due to tax evasion related to counterfeit goods.⁴ So, although all industry sectors benefit from IPR protection, trademark protection is particularly important to industry around the world.

4. Counterfeit goods pose a serious threat to health and safety. Counterfeiters are not concerned with maintaining the quality standard of the brand owner; therefore, a counterfeit good is often made with inferior, unsuitable and sometimes dangerous substances. If the product, among other things, is a consumable, a vehicle part, or involves a safety function, the consequences can be fatal. For example, Bendix, a leading supplier of safety technology for vehicles has reported that millions of dollars of Bendix look-alike valve and brake products reach the automotive after-market. They report that they have seen air dryers that were filled with kitty litter instead of desiccant (a hygroscopic substance that induces or sustains a state of dryness). There have also been reports of brake pads made of compressed grass, sawdust and other materials completely inappropriate for use on brake pads.

5. This paper provides recent data on the growing scale of IPR infringement detected in the United States, as measured by seizures of infringing imported goods by US customs authorities (US Customs and Border Protection). The paper discusses national, bilateral and plurilateral initiatives, as well as industry-led initiatives, to address counterfeiting.

II. RECENT DATA ON CUSTOMS SEIZURES OF IPR INFRINGING GOODS

6. US Customs and Border Protection (CBP) is the border agency within the Department of Homeland Security charged with management, control and protection of US borders. CBP is charged with enforcing intellectual property rights (IPR) while facilitating the flow of legitimate trade across the border. CBP devotes substantial resources to targeting, intercepting, detaining, and seizing shipments at the border containing IPR infringing goods. As part of these efforts, seizure data is collected and researched, and this data is used as a tool for future interdictions and for guiding efforts to improve international cooperation in the area of border enforcement.

7. US Immigration and Customs Enforcement (ICE) is one of the primary US law enforcement agencies involved in investigating IPR violations involving the illegal production, smuggling, and distribution of counterfeit or pirated products. The ICE Homeland Security Investigations (HSI) directorate, identifies, disrupts, and dismantles criminal organizations and the complex systems used to launder funds generated from intellectual property rights violations. The ICE HSI led National Intellectual Property Rights Coordination Center (IPR Center) stands at the forefront of the US Government's response to global intellectual property theft. The IPR Center brings together 20 partners, which includes 16 key federal agencies, Interpol, Europol and the governments of Canada and Mexico in a task force setting. The task force structure enables the IPR Center to effectively leverage the resources, skills, and authorities of each participating agency and provide a comprehensive response to IP theft. Among the many tools used by the IPR Center, seizure data is a major resource utilized in the IPR Center's enforcement efforts.

8. The Annex to this document is a selection of recent statistics and graph available from CBP and ICE. As indicated in the Annex, the United States continues to confront IPR infringing products

³ <http://www.a-cappp.msu.edu/files/AFRICABACKGROUNDER.pdf>.

⁴ <http://www.a-cappp.msu.edu/files/AFRICABACKGROUNDER.pdf>.

at the border, on a massive and increasing scale. The following points, drawn from data for Fiscal Year (FY) 2011 (October 2010-September 2011), are particularly notable:

- The value of infringing goods seized by CBP and ICE in FY2011 reached \$178.3 million, and the number of seizures reached 24,792. The total number of IPR seizures in FY2011 increased by 24 per cent compared to FY2010 and it is a 325 per cent increase over the past decade. The FY2011 number of seizures is the highest in the history of CBP.
- Consumer electronics was the top commodity seized in FY2011, with the value of seizures increasing by 16 per cent compared to FY2010. Approximately one-third of the seized goods in this category were infringing cellular telephones.
- Over the past five years, the trade in counterfeit goods has shown a marked shift towards using international mail and express courier services to transport this illegal merchandise.
- An important factor contributing to the increased use of mail and express courier services is the continued growth of websites selling counterfeit merchandise directly to consumers.

9. The significant increase in seizures recorded in FY2011 means that the expanding scope of global counterfeiting activity will remain an important preoccupation for the United States Administration, Congress, business community, and consumer groups. Additional information and statistics can be found on the CBP website.⁵

III. US INITIATIVES TO SECURE SUPPLY CHAINS

A. US BORDER ENFORCEMENT – AUTHENTICATION AND RISK MODELLING INITIATIVES

10. As counterfeiters continue to improve their criminal enterprises by using increasingly sophisticated tools that make their counterfeit goods appear authentic, CBP requires advanced tools and technologies to improve its detection of counterfeit goods.

Enforcement Tools And Technology Highlights

- To improve targeting to focus inspections on imports that present a high risk for IPR infringement, CBP continually refines its innovative IPR predictive risk model for targeting ocean cargo. The agency is currently developing a model for the express carrier environment as IPR risk has grown significantly for this mode of transport.
- CBP recently acquired handheld Raman analysers to enable officers to authenticate pharmaceuticals on-the-spot. This on-the-spot authentication will improve CBP's ability to prevent counterfeit pharmaceuticals from reaching consumers where they could pose significant danger to public health. CBP is currently working with rights holders to obtain reference libraries for pharmaceuticals to optimize the potential of these devices in deployment to the ports.
- At least one other WTO Member, Nigeria, is also using a similar technology at their ports of entry. CBP would like to partner with Nigeria by sharing information and experiences to

⁵ http://www.cbp.gov/linkhandler/cgov/trade/priority_trade/ipr/ipr_communications/seizure/ipr_seizures_fy2011.ctt/ipr_seizure_fy2011.pdf

facilitate effective deploying and utilization of these tools to ensure that consumers of both Member countries are not harmed by dangerous counterfeit pharmaceuticals.

- CBP has deployed mobile smart phone devices that provide frontline officers with access to CBP targeting systems and other information. Because of these devices, CBP frontline officers now receive real-time tactical targeting data when they are examining shipments away from desktop computers.
- Right holders have traditionally provided customs officers with product identification guides when they provide training to customs officers in ports on their protected rights. To better assist CBP personnel with authenticating genuine articles and identifying counterfeit and pirated products, CBP now encourages right holders to submit product identification training guides electronically and posts these to its secure intranet website. This makes the guides readily available to CBP officers in ports throughout the country, including locations the right holder has not visited to conduct training.

11. The methods used by CBP to identify counterfeit products are also being replicated in other countries. In addition, other WTO Members have developed additional tools to reduce the market opportunities for counterfeits. For example, Egypt promotes the legitimate trade of automotive parts by sponsoring a market for legitimate auto parts. In addition, Kenya provides training to pharmaceutical customs inspectors to curb trade in counterfeit pharmaceuticals.⁶

B. IPR CENTER - OPERATION CHAIN REACTION

12. In furtherance of its mission, the IPR Center oversees Operation Chain Reaction, an initiative targeting counterfeit items entering the Department of Defense (DoD) and US Government supply chains. Counterfeiting is a continuously growing threat and can result in catastrophic outcomes. In the area of defense, they can affect the integrity and reliability of weapons, endangering the safety of not only our service men and women but also the general public, and pose a risk to our national security. This initiative is an effort among numerous US Government agencies, including the IPR Center, the US military and NASA.

C. US PROCUREMENT – SECURING US GOVERNMENT PROCUREMENT SUPPLY CHAINS FROM COUNTERFEIT PRODUCTS

13. As the purchaser of over \$500 billion in goods and services per year, the US Government must ensure that it does not purchase counterfeit goods, secure its supply chain, and take the necessary steps to combat the evolving tactics of counterfeiters. In 2010, the Office of the Intellectual Property Enforcement Coordinator (IPEC) introduced a Joint Strategic Plan on intellectual property.

14. The Joint Strategic Plan established a government-wide working group to prevent the purchase and use of counterfeit products. The working group consists of subject matter experts to develop an anti-counterfeiting framework that is flexible enough to accommodate the wide variety of missions across the government and their different systems of procurement. The Office of Federal Procurement Policy (OFPP), Department of Defense, Department of Justice, and NASA have assumed leadership roles within the working group based on their vast expertise with US Government procurement and anti-counterfeiting practices. Other Members include the Department of Commerce,

⁶ <http://www.africasciencenews.org/en/index.php/health/63-health/198-interpol-partners-with-african-celebrities-to-fight-counterfeit-medicine>
<http://www.afriquejet.com/auto-parts-nigeria-expert-profers-solution-to-curb-fake-auto-parts-2011052012714.html>

Department of Energy, Health and Human Services, Department of Homeland Security, Department of Transportation, the Environmental Protection Agency, the Missile Defense Agency, the General Services Administration, the Small Business Administration, the Nuclear Regulatory Commission, and the National Reconnaissance Office.

15. The main focus of this interagency working group is to ensure that the US Government has the necessary tools to ensure that it does not purchase or use counterfeit products. The working group is examining legislative authority, regulations, procurement policy and guidance, industry studies and reports, and international anti-counterfeiting standards in order to identify areas where risk to the security of US Government supply chain from counterfeit parts can be reduced. The working group developed six objectives to focus the group's efforts to identify legislative, regulatory, or policy gaps and propose solutions to fill those gaps. The six objectives are:

- Counterfeit Risk Assessment
- Supplier Requirements
- Traceability
- Testing and Evaluation of Goods
- Counterfeit Training and Outreach
- Enforcement Remedies

16. The group is developing a government-wide strategy using tools that are already at the US Government's disposal and creating new tools to combat the purchase or use of counterfeit goods by the US Government. The strategy will focus on reducing the risk of counterfeit items entering the supply chain, dealing efficiently with any suspected counterfeit items that do enter the supply chain, and strengthening remedies against those who provide counterfeit items to the US Government.

IV. THIRD COUNTRY CONSUMER-BASED SOLUTIONS AND INNOVATIVE SOLUTIONS

17. The most commonly counterfeited automotive parts are brake shoes, brake pads, steering linkages, air filters, spark plugs, windshield wipers and interior parts. In the United Arab Emirates, according to a brand protection group, almost 70 per cent of counterfeit products are automotive parts. These counterfeit products are understood to be responsible for about 50 per cent of automotive accident fatalities in that country, as well as a number of other countries with significant automotive part counterfeiting.⁷

18. The automotive industry and government entities that are protecting consumers are fighting back with a number of initiatives. The tools that are being used include education campaigns, radio frequency tags, serialization, smart phone technology, and other high tech tools. These tools are reported to be helpful in the automotive parts industry, as well as a number of other industries, in fighting counterfeiting and in screening the supply chain to ensure that products in the supply chain are legitimate.

19. Educational campaigns alert consumers and customs officials to problems with counterfeit trademark products and instruct them as to how to identify counterfeit products. For example,

⁷ <http://www.havocscope.com/counterfeit-auto-parts>

legitimate auto parts makers can provide customs officers with product identification guides when they provide training to customs officers in ports on their protected rights.

20. Innovative technologies being used in a number of countries include:

- **Serialization:** This is the adding of serial numbers to a product – a standardized numerical identification for products, most frequently used for pharmaceuticals, blood products and biologics.
- **Bar code symbologies, such as GS1-Databar, formerly called Reduced Space Symbology (RSS), and other globally recognized 2D Composite symbologies:** These are barcodes that can be scanned and are used on many types of consumer products (see example below).



- **Radio Frequency Identification (RFID) tags:** This is the use of a wireless non-contact system that uses radio-frequency electromagnetic fields to transfer data from a tag attached to an object for the purpose of automatic identification and tracking. The tag contains electronically stored information which can be read from up to several meters away. Unlike a barcode, the tag does not need to be within the line of sight of the reader and may be embedded in the tracked object.
- **Holograms and watermarks.**
- **Anti-counterfeiting printing ink technologies:** These inks are used to invisibly mark surfaces of products and documents.
- **Covert features on products:** These are hidden features included on a product or packaging and can only be exposed using special tools.
- **Smart phone technology:** By text messaging a unique code found on a product to a specific number, end customers can confirm at the point of sale that a product is genuine. In addition, this technology can be used to provide frontline officers with access to targeting systems and other information. Because of these devices, frontline officers now receive real-time tactical targeting data when they are examining shipments away from desktop computers. This technology is being used in Ghana, India, Kenya and Nigeria and the United States, among others.

V. INTERNATIONAL RESPONSES TO COUNTERFEITING

21. Customs Authorities are responsible for about 70 per cent of counterfeit seizures globally. In some instances, this percentage is even higher, e.g. in Europe the rate is 90 per cent. In many cases, these authorities work together bilaterally and plurilaterally to address counterfeiting.

A. BILATERAL EFFORTS

22. Bilateral efforts to address counterfeiting can involve two countries working together to improve screening at their borders to reduce trade in counterfeit products between them. One such

example is the Memorandum of Cooperation signed in 2007 between the customs administrations of the United States and China.

23. Bilateral agreements can also include technical assistance. Another example of bilateral cooperation to address counterfeiting is a March 2011, Memorandum of Understanding (MOU) between India and Nigeria. According to press reports, pursuant to this MOU, Indian authorities will provide training and assistance to Nigeria's National Agency for Food and Drug Administration and Control (NAFDAC). In addition, the MOU provides that India will pay for the costs of legal actions taken against counterfeiters linked to Indian manufacturers, assist Nigeria in confiscating assets from any Indian drug counterfeiters, and incentivize whistle blowing by paying an award for tips that lead to the discovery of the source and producers of counterfeit drug products.⁸

B. WORLD CUSTOMS ORGANIZATION

24. The World Customs Organization (WCO) has a secure communications tool, Interface Public Members (IPM), that facilitates the exchange of information between the private sector and customs authorities, in order to improve the identification and seizure of counterfeit products. The IPM provides trademark owners the opportunity to post product identification guides to the WCO website, making them accessible to WCO member customs authorities. In addition, the IPM includes a genuine/fake database that highlights key aspects of elements such as brand name and product appearance, packaging and distribution routes, enabling trademark owners to give customs officials valuable information to help them distinguish between genuine and fake products. The genuine/fake database is easy for field customs officers to access using their own systems, in their own language.

25. In April 2013, the WCO will host the Global Congress on Combating Counterfeiting and Piracy in Turkey. The Congress endeavors to establish a high level of public-private partnership to pursue collective enforcement action and to generate conditions which lead to greater investment of human and financial resources in enforcement measures.

26. The WCO provides training/capacity building as requested by its members. This capacity building promotes the exchange of views, experiences, research and best practices, and facilitates improved cooperation between Customs administrations, the private sector and international organizations.

C. INTERPOL

27. Interpol has undertaken a number of activities to eliminate counterfeits from supply chains. Two examples of interventions include Operation Atlantique and Operation Opson.⁹ These interventions show the range of products that are counterfeited, in the countries in which the interventions were taken, as well as in other countries.

- Operation Atlantique: This operation was held from April to June 2011 across five countries in Western Africa. This operation resulted in 16 arrests and the seizure of fake products

⁸ The Government of India's press release states that the bilateral effort will promote mutual trade in "good quality drugs, drugs testing and analysis, detection and prevention of supply of adulterated, fake, drugs. It will also enable education, training and capacity building of the personnel involved in this field." See <http://meaindia.nic.in/mystart.php?id=530217428> See also:

<http://www.thisdaylive.com/articles/life-imprisonment-for-indians-shipping-fake-drugs-to-nigeria/88697/>;
http://www.newswatchngr.com/index.php?option=com_content&task=view&id=2984&Itemid=32; and
<http://www.biopharminternational.com/biopharm/News/Nigeria-Looks-to-Simple-Packaging-Controls-and-Int/ArticleStandard/Article/detail/715623>

⁹ Interpol website: <http://www.interpol.int/Crime-areas/Intellectual-property-crime-and-counterfeiting/Operations>

worth more than \$1.5 million. Recovered products included soup cubes, computer supplies, African fabrics, plastic packaging used for food and water, cigarettes and CDs.

- Operation Opson: This operation focused exclusively on so-called everyday products. The operation was held in November and December 2011 across ten European countries and hundreds of tons of fake and substandard food and drink were seized during this operation. Among the products seized were substandard olive oil, tomato sauce, cheese, wine, fish, and confectionary.

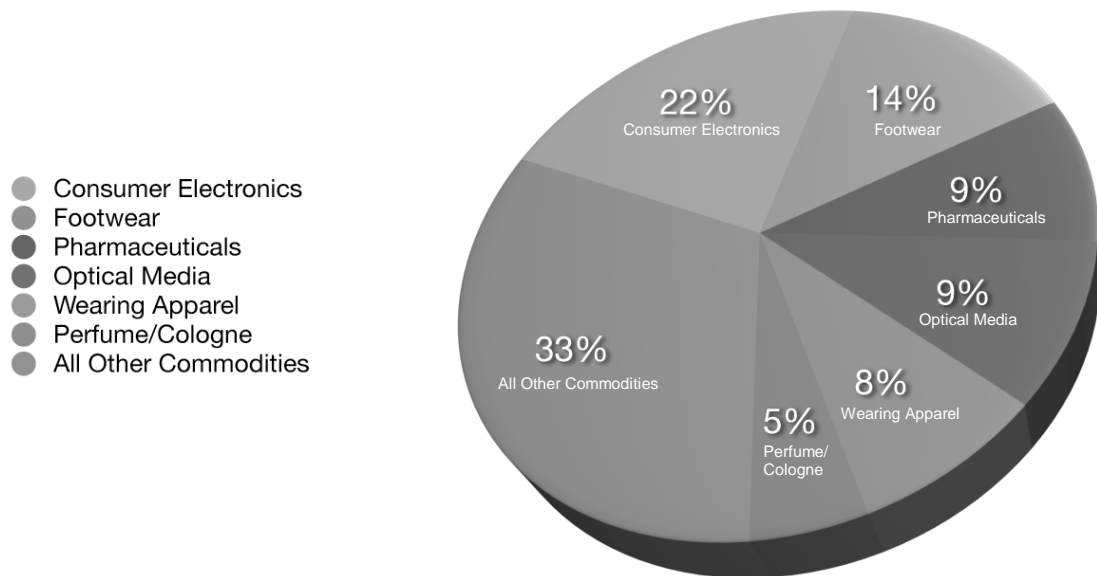
VI. CONCLUSION

28. The United States has made it a priority to secure our supply chains in order to protect the welfare and interests of the American people. Many other countries are doing the same. Governments must be one step ahead of the counterfeiters who are becoming more and more sophisticated in the way they manufacture and distribute their goods. The techniques discussed in this paper have been helpful in addressing the growing scale of IPR-infringing trade encountered in the United States. In addition, the measures being undertaken by other country governments, as described above, are also reducing the market opportunities for counterfeit products. These initiatives have been summarized here for the information of Members of the TRIPS Council with the aim to promote an exchange of information that can help eliminate counterfeits from the global supply chain.

ANNEX 1

Department of Homeland Security

US Customs and Border Protection and US Immigration and Customs Enforcement
FY 2011 Top IPR Commodities Seized



Source: US Customs and Border Protection, Office of International Trade.
