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## Intellectual property rights in third countries

### European Parliament resolution of 9 June 2015 on Strategy for the protection and enforcement of intellectual property rights in third countries (2014/2206(INI))

(2016/C 407/02)

*The European Parliament,*

- having regard to the communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee of 1 July 2014 entitled ‘Trade, growth and intellectual property — Strategy for the protection and enforcement of intellectual property rights in third countries’ (COM(2014)0389),
- having regard to the Commission’s Strategy for the enforcement of intellectual property rights in third countries <sup>(1)</sup> and its independent evaluation of November 2010,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 11(1) and 17(2),
- having regard to the Europe 2020 strategy (COM(2010)2020),
- having regard to the European Council conclusions of 21 March 2014,
- having regard to the 2008 report by the Organisation for Economic Co-operation and Development (OECD) entitled ‘The economic impact of counterfeiting and piracy’ as updated in 2009,
- having regard to the 2009 report by the Organisation for Economic Co-operation and Development (OECD) entitled ‘Piracy of digital content’,
- having regard to the 2013 joint study by the European Patent Office and the Office for Harmonisation in the Internal Market (EPO/OHIM) entitled ‘Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union’,
- having regard to the 2010 trade policy working paper by the OECD entitled ‘Policy Complements to the Strengthening of IPRS in Developing Countries’,
- having regard to the 2013 study by the World Trade Organization, the World Intellectual Property Organization and the World Health Organization ‘Promoting Access to Medical Technologies and Innovation’,
- 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 <sup>(2)</sup> (Trade Barriers Regulation),
- 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>,

<sup>(1)</sup> OJ C 129, 26.5.2005, p. 3.

<sup>(2)</sup> OJ L 349, 31.12.1994, p. 71.

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

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- 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 <sup>(1)</sup>,
  - having regard to Council Regulation (EC) No 953/2003 of 26 May 2003 to avoid trade diversion into the European Union of certain key medicines <sup>(2)</sup>,
  - having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code <sup>(3)</sup>,
  - having regard to Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 <sup>(4)</sup>,
  - having regard to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and to the Doha Declaration on the TRIPS agreement and public health adopted by the World Trade Organisation Ministerial Conference on 14 November 2001,
  - having regard to its resolution of 12 July 2007 on the TRIPS Agreement and access to medicines <sup>(5)</sup>,
  - having regard to its resolution of 18 December 2008 on the impact of counterfeiting on international trade <sup>(6)</sup>,
  - having regard to its resolution of 22 September 2010 on enforcement of intellectual property rights in the internal market <sup>(7)</sup>,
  - having regard to the Commission Report of 31 July 2014 on EU customs enforcement of intellectual property rights — Results at the EU border 2013 <sup>(8)</sup>,
  - having regard to Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017 <sup>(9)</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 10 December 2014,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade (A8-0161/2015),
- A. whereas competitiveness of the EU has been, and increasingly will be, based on creativity and innovation, and whereas 'smart growth' — developing an economy based on knowledge and innovation — is one of the three priorities of the Europe 2020 strategy;
- B. whereas intellectual property rights (IPR) contribute to the development of innovation and creativity, whereas their protection is a key issue for the competitiveness of Europe and whereas, accordingly, the EU needs a more ambitious strategy concerning the protection of intellectual property rights vis-à-vis its trading partners;
- C. whereas it is essential to promote the strengthening of links between education, business, research and innovation, and intellectual property; whereas procedures for combating IPR infringements are costly and time-consuming, particularly for SMEs, including individual rightholders;

<sup>(1)</sup> OJ L 157, 9.6.2006, p. 1.

<sup>(2)</sup> OJ L 135, 3.6.2003 p. 5.

<sup>(3)</sup> OJ L 269, 10.10.2013, p. 1.

<sup>(4)</sup> OJ L 181, 29.6.2013, p. 15.

<sup>(5)</sup> OJ C 175 E, 10.7.2008, p. 591.

<sup>(6)</sup> OJ C 45 E, 23.2.2010, p. 47.

<sup>(7)</sup> OJ C 50 E, 21.2.2012, p. 48.

<sup>(8)</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2014\\_ipr\\_statistics\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2014_ipr_statistics_en.pdf).

<sup>(9)</sup> OJ C 80, 19.3.2013, p. 1.

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- D. whereas the EU and its Member States, as members of the World Trade Organisation, are bound by the Agreement on Trade Related Intellectual Property Rights (TRIPS) and thereby committed to the adoption and implementation of minimum standards of effective measures against all infringements of IPR;
- E. whereas the IPR debate should be based on qualified reflection of past experiences as well as of future technological trends, while keeping consistency between internal and external aspects and distinguishing between physical and digital environments, where appropriate, taking into consideration the concerns of all stakeholders, including SMEs and consumer organisations, and aiming at ensuring full transparency of interests and adequate legitimacy in striving to achieve a fair balance amongst all interests at stake;
- F. whereas counterfeiting is no longer confined to luxury products, but also includes commonly used goods, such as toys, medicines, cosmetics and foodstuffs which, if counterfeited, can cause injuries or pose serious health risks for consumers;
- G. whereas the customs authorities in the EU detained almost 36 million items suspected of violating intellectual property rights in 2013, with the value of the intercepted goods exceeding EUR 760 million;
- H. whereas 72 % of all detentions in 2013 were related to small consignments; whereas medicines represented for the fourth consecutive year the top category, accounting for 19 % of these detentions and 10 % of all detentions;
- I. whereas it is necessary to combat IPR infringements in order to: lower the risks they can pose to the health and safety of consumers and to the environment; protect value creation in the EU and in third countries; avoid economic and social consequences for EU businesses and creators; and avert risks to cultural diversity in Europe and in third countries; whereas the fight against organised crime profiting from trade in counterfeit and pirated goods requires specific attention;
- J. whereas a comprehensive IPR legal framework should be combined with effective enforcement, with reference, where appropriate, to enforcement measures and penalties, while ensuring that IPR enforcement measures do not unduly burden legitimate trade;
- K. whereas one of the main features of intellectual property protection is the correct enforcement of existing laws and international commitments, including statutes on penalties;

### **General remarks**

1. Appreciates the approach followed by the Commission, in particular with regard to the call for balance between divergent interests;
2. Considers that the debate on a fair balance between rightholders' interests and end users' interests is multifaceted and extremely complex, with economic interests on all sides; considers that the Commission should explore how an informed and transparent public debate can be had on the protection and enforcement of IP and what this means for consumers; considers that the call for improved stakeholder involvement in the debate on IPR need to be accompanied by steps to ensure transparency and legitimacy for all participants; considers that there is no evaluation of the communication that takes into account both the 2004 Strategy for the enforcement of intellectual property rights in third countries and the rejection of the Anti-Counterfeiting Trade Agreement (ACTA);
3. Stresses that it is not sufficiently clear by what means and by what method the results included in the communication could be achieved, in particular as regards what resources will be used and where they will be taken from, also considering the limited resources made available for the purpose of supporting EU rightholders who export or who establish themselves in third markets;

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4. Considers that there is no clear indication of coordination between internal policies and external policies regarding the protection of IPR, and stresses the importance of internal improvement on the issue; recognises that coherence between internal and external policies does not negate the need for a tailored approach, recognising the specific facts and circumstances existing in a third country market at issue;
5. Underlines that IPR protection should be seen as a first step — necessary but not sufficient — towards establishing access to a third country's market, and that the ability to exercise effectively recognised IP rights is contingent upon substantive protection, including effective enforcement and remedies, in the country concerned;
6. Stresses that the commercial nature of many IPR infringements, and the growing involvement of organised crime in them, has become a major issue; regrets that the United Nations Convention against Transnational Organised Crime (Palermo Convention) still does not have an anti-counterfeiting protocol, and calls on the Commission and the Member States to step up their efforts considerably to bring this about;
7. Appreciates and supports the aim of better coherence between IPR protection and enforcement and other policies, and between the Commission and the Member States in reaching this goal; considers that IPR protection, and adequate measures to combat IPR infringements, can contribute in the fight against organised crime, money laundering and tax evasion and for the development of a fair, sustainable, future-proof and innovation-friendly digital market;
8. Supports the Commission in its work identifying geographical priorities, using as a starting basis its biannual reports on the protection and enforcement of IPR in third countries;
9. Considers that the strategy does not give sufficient recognition to the distinction between, on the one hand, the physical counterfeiting of trademarks and patents and, on the other, violations of copyright, especially in the digital environment; notes that, with the increasingly rapid pace of digitisation, the issue of IPR protection and enforcement in the digital world will assume increasing importance worldwide;
10. Considers that the strategy should be better adapted to the digital environment and include a strong collaboration with customs authorities and market surveillance authorities to ensure horizontal coherence;
11. Underlines that geographical indications and their protection are as important as other types of intellectual property in that they ensure that products are traceable up to the time of consumption and safeguard producer know-how;
12. Takes the view that the Commission should ensure that geographical indications are recognised and genuinely protected when negotiating free-trade agreements with third countries, in particular with regard to the Transatlantic Trade and Investment Partnership (TTIP);
13. Takes the view that the TRIPS agreement should be implemented in a balanced and effective manner where appropriate and that any flexibilities in its wording should fully respect the fundamental principle of non-discriminatory treatment for all fields of technology, as laid down in its Article 27(1); believes that the Doha Declaration should also be taken into account, while underlining that reinforced intellectual property protection and enforcement not only benefit EU countries but also help developing countries build and develop the domestic frameworks necessary to encourage and protect innovation and research, an issue of increasing relevance as they move up international trading value chains;

#### ***Enforcement and public awareness***

14. Underlines the need for an informed, balanced and more transparent public debate on enforcement, involving all interested parties and balancing all private and public interests;
15. Recognises the need to increase awareness among consumers of the pecuniary loss, the detriment to innovation and creativity and, on occasion, the danger to health and safety caused by the purchase or accessing of goods that infringe IPR; points to the fact that stronger enforcement alone will not solve existing and future concerns regarding IP protection and enforcement, and it should be complementary to an increased awareness among consumers; stresses the role of the business sector in this regard;

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16. Considers it clear that public support in defence of IPR must be achieved; notes in this context the work of the Office of Harmonisation in the Internal Market (OHIM), which includes awareness-raising campaigns among citizens of the impacts of commercial-scale IP infringement;

#### ***Internet and IPR***

17. Welcomes the memorandum of understanding, signed on 4 May 2011, between rights holders and internet platforms in a joint effort to reduce the sale of counterfeit goods via e-commerce platforms; calls on the Commission and the Member States to enter into a structured dialogue with online platforms on how best to identify and tackle the sale of counterfeit goods;

18. Notes that the problem of IPR infringements has multiplied in recent years as a consequence of digitalisation and the growing number of digital selling platforms, where counterfeited products are sold and distributed worldwide without any effective means of control; calls, in this regard, for a deeper reflection aimed at the adoption of more efficient tools for controlling the online selling of physical products;

19. Considers that the wording of the strategy concerning the promotion of sound protection of geographical indications on the internet would need to be more specific in order to put forward concrete objectives;

20. Calls on the Commission to work with the Internet Corporation for Assigned Names and Numbers (ICANN) and the World Intellectual Property Organization (WIPO) to establish a protection mechanism for geographical indications on the internet;

21. Considers that the responsibilities of intermediaries needs to be evaluated carefully; would, in this regard, have welcomed a more sophisticated strategy, while recognising that this issue is a subject for a separate debate;

#### ***Development and emerging economies***

22. Calls on the Commission to contribute to creating an environment in which the interests of the Member States and of third countries are convergent, and where there is a reciprocal interest in the creation of high-standard protection frameworks coupled with effective remedies to close the gaps in IPR protection; notes the need to distinguish carefully between the circumstances of the different 'developing countries', and between the trade issues involved, taking into account the specific circumstances of individual developing countries;

23. Welcomes the work done by the Commission in supporting, on a case-by-case basis, developing countries wishing to improve their IPR systems, and calls on the Commission to continue and step up these efforts by continuing to provide appropriate technical assistance in the form of awareness-raising programmes, legislative assistance and training of officials, with consideration given to the level of development in each country;

#### ***Access to medicines***

24. Agrees with the call for a broad response to the complex and multifaceted problem of the relation between IPR and universal access to affordable medicines, underlining in this context the importance of a patient-focused approach to IPR in the pharmaceutical sector;

25. Calls on the Commission and the Member States to continue to ensure support for a constructive dialogue on access to medicines involving all relevant stakeholders, and to find ways to facilitate access to medicines for the populations of the poorest countries, who are unable to obtain the best treatments currently available;

26. Takes the view that, while the interest and competitiveness of EU pharmaceutical companies must be protected by preserving their capacity for innovation, and taking into account that some EU enterprises provide access to medicines through assistance programmes and discounted tiered prices, it is necessary for medicine prices to be within the reach of people in the country in which they are sold, making support for the use of the flexibilities provided for in the TRIPS Agreement and recognised in the Doha Declaration essential, while account must also be taken of market distortions caused by the reselling of medicines in third countries; Calls on the Commission and the Member States to continue efforts to ensure that border measures intended to block the importation of counterfeit medicines do not negatively affect the transit of generic drugs;

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27. Stresses that companies should be encouraged to collaborate in a better way in their competitive environment and to work together with public authorities with the aim of guaranteeing greater and improved access to medicines in the Member States and in third countries; calls on the Commission to consider supporting innovative mechanisms such as patent pools to stimulate research while ensuring generic production;

28. Considers that the Union needs to engage in the broader debate on advancing healthcare worldwide, including strategies to strengthen health systems;

29. Calls on the Commission to stimulate early exports of EU-produced generic and biosimilar medicines as soon as they are no longer patent-protected in third countries;

#### ***Providing better data***

30. Considers that some of the statistical data cited in the communication has been derived using a controversial and already criticised methodology, and that the statistical data must be improved in order to reflect in a better way the actual situation regarding the centrality of IPR, and its protection and enforcement, to the EU economy, not only to inform and improve existing policy but to further support the principle of evidence-based policy making;

31. Agrees with the Commission's reasoning for the establishment of the EU Observatory on Infringements of Intellectual Property Rights, and asks that it be allocated dedicated resources;

32. Points out that the Observatory should be composed in a comprehensive way and should not replicate already existing bodies;

33. Calls on the Commission to work towards the Observatory maintaining its independence, to ensure that its work is not undermined by real or perceived biases;

#### ***EU legislation and cooperation within the EU***

34. Recognises that better, appropriately harmonised, internal IPR-related policies could be helpful in the effort to improve the standard of protection and enforcement of IPR globally;

35. Calls on the Commission to work with the Member States towards the ratification of the WIPO Trademark Law Treaty, the Geneva Act of the Hague Agreement and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as well as of other IPR-related international agreements;

36. Calls on the Commission to take further steps in line with the outcome of the public consultation of its Green paper 'Making the most out of Europe's traditional know-how' (COM(2014)0469) concerning a possible extension of geographical indications protection of the Union to non-agricultural products;

#### ***Protection and enforcement of IPR in third countries***

37. Supports the Commission's pledge to give priority to promoting better IPR protection, and enforcement thereof, in the WTO and in any other international arenas, thereby opening up new markets for European exporters and improving existing market access;

38. Notes that the granting of Market Economy Status in terms of trade defence instruments is contingent upon, among other criteria, IP protection in the country concerned;

39. Calls on the Commission and the Member States to uphold IPRs more effectively in all relevant multilateral organisations (the WTO, the World Health Organisation and the World Intellectual Property Organisation) and to work towards the inclusion in the WTO system of those IPR-related international agreements that are not yet part of it, such as the WIPO Trademark Law Treaty, the WIPO Phonograms and Performance Treaty, the WIPO Copyright Treaty, the Geneva Act of the Hague Agreement and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;

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40. Considers that, in negotiations for bilateral free trade agreements, appropriate attention should be given to chapters on intellectual property, and that the negotiating parties should recognise that the right to conduct business should take into account respect for IPR and compliance with existing legal frameworks; welcomes the Commission's work so far in successfully integrating chapters on IP protection and enforcement in bilateral free trade agreements;
41. Considers that ratification of the WIPO treaties listed above for inclusion in the WTO system should be included in the bilateral free trade agreements concluded by the Union;
42. Supports the Commission's approach of setting up IP dialogues and working groups with priority countries with which comprehensive negotiations are not ongoing, with the aim of achieving and strengthening specific commitments in IP protection and enforcement; stresses the need to put IPR on the agenda of higher-level political meetings when progress at the level of IP dialogues and inter-agency meetings is not forthcoming;
43. Stresses that IPR cooperation between the Union and other regional blocs should be enhanced whenever possible;
44. Calls on the Commission to make more regular recourse to relevant dispute settlement mechanisms, including the WTO's Dispute Settlement Body, when the rights of the Union's economic operators, including all IPR holders, are infringed;
45. Calls on the Commission to encourage third countries to give reciprocal recognition of IP legal experts' right to practice;
46. Calls on the Commission and Member States to step up customs cooperation within the Union and with third countries for the seizure of counterfeit goods and to simplify customs procedures;
47. Calls on the Commission and Member States to cooperate plus closely with third countries regarding copyright and licensing issues;
48. Is convinced that better protection of intellectual property rights and effective implementation of related rules in third countries would be a strong incentive for investors from the European Union and elsewhere to invest, share new technological skills and update existing technologies;

***Assistance in third countries and geographical focus***

49. Notes that some Member States have IP attachés within their delegations in certain key countries; believes that better coordination and information sharing among Member States could provide for new opportunities to meet shared objectives in terms of IP protection in third countries;
50. Considers that EU economic operators and consumers in third countries in which IPR infringements are more common should be especially protected through an extension of the IPR Helpdesk;

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