A report from the seminar at the Centre for European Policy Studies on

Preventing Counterfeiting and Illicit Trade: Progress and Challenges

Moderated by Kerstin Born-Sirkel, Director for Corporate and External Relations at CEPS

On Friday 20th May 2016 the Centre for European Policy Studies, in cooperation with MSLGROUP, hosted a seminar designed to share and discuss the latest research results and policy approaches to tackling the illicit trade in counterfeit and contraband goods both within the EU and outside its borders. Bringing together businesses, economists, representatives of international organisations and EU institutions, the seminar was a forum for intelligent exchange about the widening impact of illicit trade, lessons being learned from current regulation and practical business cases featuring new technological innovation in product tracking, tracing and authentication.

1. The impact of counterfeiting and illicit trade according: OECD & EUIPO research

The first speaker was **Michael Morantz**, Policy Analyst at the **OECD**, who presented the findings of a new comprehensive report mapping the economic impact of the trade in counterfeit and pirated goods prepared jointly by the OECD and the European Intellectual Property Office (EUIPO).

Based on customs data on seizures of fake goods and numerous interviews with industry experts and enforcement officials, the worldwide trade in fake goods was estimated to amount to USD 461 billion, or the combined GDP of Ireland and the Czech Republic. It represents 2.5% of world trade and as much as 5% of total EU imports with a value of €85bn.

There is an increasing threat to intangible assets such as intellectual property and an exposure to digital attacks, coupled with the rise of e-commerce. Both in this arena and more generally, western markets face the greatest threat while the 'provenance economies' that produce the counterfeit items are largely emerging economies, dominated significantly by China and Hong Kong, and complemented by Free Trade Zones and countries with weak governance. Morantz emphasised the increasingly complicated trade routes and the fact that illicit trade is very much a global problem that cannot be tackled in the EU alone.

The countries are primarily affected by illicit trade are members of the OECD, with the greatest number of rights-owner infringements suffered by the US, France, Italy and Switzerland. This correlates with the significant number of brands based in these markets. Morantz added however that it is not just luxury and consumer brands being targeted, but increasingly also B2B products like machinery, spare parts and chemicals – where the effect of quality issues can be particularly significant. He also mentioned a growing trend of illicit goods being shipped in small quantities using express postal services.

Morantz also anticipated that OECD focus in the coming months in this area will be mainly related to information gathering and comparative analysis of the existing practices and policies in place to tackle illicit trade. On this basis, a recommendation on a broader policy framework will be made.

Morantz was joined in the opening session by **Nathan Wasjman**, the **EUIPO**'s Chief Economist, who drew on information from the sectorial studies the

organisation has undertaken to examine the economic and social impact of counterfeiting across the EU. This, he said, has led not only to a reduction in legitimate sales, but also to significant tax losses and a negative impact on businesses and employment.

The EUIPO sectorial studies are based on a methodology that looks at both forecasting based on likely consumption and variables such as demand and relative income inequality (GINI index) and corruption within a Member State, as well as the results of EUIPO Intellectual Property perception study, which examines attitudes to IP theft.

At this stage, the sectorial studies completed include cosmetics and personal care, clothing, footwear and accessories, jewellery and watches, handbags and luggage, sports goods, toys and games, recorded music industry and alcoholic beverages, with focus on wine and spirits. The medicines, tobacco products, vehicle parts, pesticides, computers and smartphones sectors are currently planned and are expected to be covered in due course. Referring to the results of the study into perfume counterfeiting, he explained that against an average 10% loss of sales of genuine products across the EU, the results were closer to 20% as GDP decreased, demonstrating the need to tackle greater acceptance of counterfeiting in lower income markets and dis-incentivize the crime.

2. International and European initiatives

The theme was ably tackled by **Jean Bergevin**, Head of Unit IP and Fight Against Counterfeiting at **European Commission**'s DG GROW. Bergevin opened by referring to the relative leniency of European justice systems to the perpetrators of illicit trade, making it an attractive option for many criminals. He argued that both governments and companies need to be much more robust in their response to illicit trade,

given the economic impact amounting to yearly tax losses of €11.5bn across the EU.

Although it is clear that public authorities have to step up their response to this threat by increasing the efficiency of enforcement and legal systems, so too the affected industries need to play their role in helping to address weaknesses in securing supply chains. Inside companies, IP infringement is too often reduced to just a legal issue and lead to a purely defensive corporate approach. There needs to be a greater awareness at board and CEO level of the impact of illicit trade on brand equity and the increasing complexity of a 'supply chain' becoming a 'supply web' chain. Referring to the limited industry response to the Public Consultation on IP Infringement, the results of which are due to be published on 21st June, he stated that a greater engagement among CEOs from affected industries would help to better define a more effective regulatory and implementation framework in the fight against counterfeiting and illicit trade.

Part of the solution, argued the next contributor, **Anca Elena Trefas**, Project Coordinator of IPM, **World Customs Organisation**, was greater collaboration between government and industry to assist customs authorities in identification training and awareness raising. As part of this, Trefas has been leading a project to create an Intellectual Property Management (IPM) system that allows customs officials to use an enabled smartphone to scan a security feature. The success of the system will depend however on cooperation with rights-holders to implement scannable security features, upload the relevant information and coordinate with customs authorities.

A number of delegates considered that the adequate involvement of the industry in the EC consultation process should be improved and fostered in terms of relevance and

pertinence of questions raised in formal consultations, and also in relation to the follow-up that should be ensured to industry responses. The panel was also asked about their thoughts on collaboration between affected industries and public authorities in setting standards in general and on how the different services within the European Commission (e.g. TAXUD, GROW, SANTE etc.) coordinated their regulatory developments and approaches. Mr Bergevin stressed the European Commission's commitment as a whole, beyond single policy directorates, to addressing this problem, as highlighted by the Commission Action Plan against IP infringement, adopted by the full College. This action plan provides for internal coordination and for the need to establish dialogue with the right holders and relevant intermediaries. The Public Consultation on IP Infringement and the accompanying conference on 21st June are a clear illustration of this willingness to enter into this dialogue. Ms Trefas spoke of the need to work not only on security features with brand owners, but also with the shipping and sourcing economic operators.

3. Stakeholders cooperation in designing and applying supply chain security technology

The last panel of the seminar concentrated on the role of technology providers and stakeholders in designing and applying supply chain security technology. **Philippe Coene**, **Aegate**'s General Manager for Benelux, opened by explaining how the EU Falsified Medicines Directive (FMD) will change dispensing mechanisms forever by making every pharmacist verify every medicine. While the current legislation undoubtedly offers many advantages, many questions about its implementation still remain unanswered. There is the question of the need for further aggregation of the codes and who in the supply chain needs to pay for that, the concerns of pharmacists that the authentication mechanism must work with existing systems, operate when offline and not hold up their ability to serve patients. The solution he proposed was closer cooperation with the pharmaceutical industry and for the EU to place greater trust in brand owners.

Dr Thomas Gering, President of the Board of **NANO4U**, argued that it was also important to understand FMD's limitations given that it only requires packaging, rather than the medicine itself, to be verified with a visible randomised code, thus offering a route for counterfeiters to infiltrate the contents of each pack. His company, he explained, is looking to address this by taking authentication down to the level of an individual tablet. He also argued that the collation of significant volumes of codes in one central database was in itself a risk and questioned therefore the need for a global external repository of all data. His recommended approach is for a database per manufacturer.

Daniela Previtali, Global Marketing Director **WIBU Systems and member of the German VDMA** group 'Protect-ing', took the discussion in a different direction, looking at the rise of IP theft in what is termed Industrial Revolution 4.0, dominated by Internet and Cyber-physical systems. Citing a VDMA survey on digital piracy in the German manufacturing sector, she explained that 70% of respondents had been affected by the crime, with an estimated GDP impact of €7.3bn. The problem of piracy originates largely from China, she explained, but noted that a significant minority is also domestic. Previtali argued that the industry needed to better protect itself from software and data attacks by using more sophisticated encryption techniques and that brand owners

and policy makers needed to be aware of this new frontier in IP theft.

Several seminar participants asked what conclusions could be drawn from the experience of implementing the Falsified Medicines Directive for other industry sectors and related legislation. Some participants also highlighted the role of high rates of taxation as an incentive for illicit trade, and mentioned the recent experiences of the spirits industry in Greece.

According to Philippe Coene, it is clear from the experience of the FMD that a big consultation round before starting the exercise is crucial, but that it does not stop there, and that all affected stakeholders must be involved in all steps of the implementation process in order to get a system that not only works on paper, but also can be implemented effectively.

Dr Thomas Gering added that while the FMD might work for the EU, it is clear that also other big countries such as China, the US and India are developing their own systems.

For the individual companies it is important to see how they can have a system that integrates the tracking requirements of these different markets around the world, rather than having to implement 15 different systems. He and Previtali, also pointed to the persistently divergent attitudes on data handling and protection across the Atlantic as one of the reasons why it would be very difficult to work with central databases.

They both underlined the need for global standards and the fact that companies and the regulators will need to stop seeing track and trace as an issue of pure compliance, and instead consider it as a critical supply chain requirement.

Key considerations emerging for defining effective operational standards across countries and industries:

- Clear definition of policy objectives for applying tracking, tracing and authentication solutions (TT&A);
- Define standard technologies only for basic elements of the TT&A process;
- Apply defined standards uniformly to the products to be tracked, traced and authenticated;
- Allow producers and supply chain operators to select the most appropriate technologies to fulfill TT&A standards;
- Promote competition, innovation and the use of best in class technology.

Dr Thomas Gering underlined his belief that the individual manufacturers will need to be at the core of any solution, for it to work. Public authorities should set out the standards and requirements for the companies to fulfil, and then it should be up to the business to see how they can best implement this.

Kerstin Born-Sirkel, Director of Corporate and External Relations at **CEPS** referred to the business-driven Coalition Against Illicit Trade (CAIT) and to its newly published White Paper that provides an overview of key conditions for defining and implementing operational standards of innovative anti-counterfeiting technologies.

Eric Lequenne, **Atos Worldline** and a Coalition Founder, explained that the role of CAIT is to act as a forum for all those interested in tackling illicit trade to share knowledge, best practices and experience to contribute to the policy debate and the broader business community on how best to tackle the issue. He underlined the importance of expanding the scope of industry collaboration given the diverse range of technical and operational issues to be considered when defining new standards that are expected to be implemented across countries and through-out the supply chain.

Kerstin Born Sirkel closed the debate and on behalf of CEPS thanked all panellists and participants for their valuable contributions. She concluded by underlining the important role of industry in coming together to share knowledge and offer their expertise in finding solutions on this topic.