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**Report on the protection and enforcement of intellectual property rights in third
countries**

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Report on the protection and enforcement of intellectual property rights in third countries

1. INTRODUCTION

1.1. Objective

Efficient, well-designed and balanced intellectual property (IP) systems are a key lever to promote investment in innovation and growth. Intellectual Property Rights (IPRs) are one of the principal means through which companies, creators and inventors generate returns on their investment in innovation and creativity¹.

This report is part of the efforts of the European Commission to strengthen the protection and enforcement of IPR in third countries. It has been published biennially since 2006, the last one dating from 20 December 2019.

The main objective of this report is to identify third countries in which the state of IPR protection and enforcement (both online and offline) gives rise to the greatest level of concern and thereby to establish an updated list of so called "priority countries". This is not an exhaustive analysis of IPR protection and enforcement around the world. "Priority countries" are not necessarily those where IPR protection and enforcement is the most problematic in absolute terms but rather those where such deficiencies are deemed to cause the greatest economic harm to EU interests.

This report will help focus efforts and resources of the European Commission on countries and on the specific areas of concern, with the aim of improving IPR protection and enforcement worldwide. It devotes special attention to new developments since the last report and until 16 November 2020.

This report also aims to inform right holders, in particular small and medium-sized enterprises, about potential risks to their IPR when engaging in business activities in certain third countries and thus to allow them to design business strategies and operations to protect the value of their intangibles. The report should also be useful for authorities in third countries as a source of information.

1.2. Economic importance of IPR and negative effects of counterfeiting and piracy

Effective IPR protection and enforcement are crucial for economic growth and for the EU's ability to stimulate innovation and stay competitive globally. According to a joint study by the European Intellectual Property Office (EUIPO) and the European Patent Office (EPO) from

¹ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *A balanced IP enforcement system responding to today's societal challenges*, COM(2017) 707 final.

<https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-707-F1-EN-MAIN-PART-1.PDF>

September 2019,² IPR-intensive industries³ generated around 84 million or 38.9% of all jobs in the EU during the period 2014-2016 (including indirect jobs⁴). Over the same period, IPR-intensive industries accounted for around 45% of the EU GDP, worth some € 6.6 trillion annually.

Table 1: Contribution of IPR-intensive industries to EU employment and GDP (2014-2016 average)

IP right	Direct employment	Share of total direct employment (%)	Direct & indirect employment	Share of total direct and indirect employment (%)	Value added / EU GDP (€ million)	Share of total EU GDP (%)
All-IPR industries	62,962,766	29.2%	83,807,505	38.9%	6,551,768	44.8%
Copyright-intensive industries	11,821,456	5.5%	15,358,044	7.1%	1,008,383	6.9%
Patent-intensive industries	23,571,234	10.9%	34,740,674	16.1%	2,353,560	16.1%
Plant variety-intensive industries	1,736,407	0.8%	2,618,502	1.2%	181,570	1.2%
Trade mark-intensive industries	46,700,950	21.7%	65,047,936	30.2%	5,447,857	37.3%
GI-intensive industries	n/a	n/a	399,324	0.2%	20,155	0.1%
Design-intensive industries	30,711,322	14.2%	45,073,288	20.9%	2,371,282	16.2%

Source: *IPR-intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, joint EPO/EUIPO study, 3rd edition, September 2019.*

Note: due to overlapping use of IP rights, the sum of the figures for the individual IPR exceeds the total figure for IPR-intensive industries

The economic importance of IPR is also reflected in the contribution of IPR-intensive industries to the EU's external trade. In 2016, taking both goods and services into account, 80% of EU imports and 82% of EU exports were generated by the IPR-intensive industries, which translates into a trade surplus of around € 182 billion.

² EPO/EUIPO (September 2019), *IPR-intensive industries and economic performance in the European Union, Industry-Level Analysis Report, Third edition.*

[http://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/\\$File/IPR-intensive industries and economic performance in the EU 2019 en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/9208BDA62793D113C125847A00500CAA/$File/IPR-intensive%20industries%20and%20economic%20performance%20in%20the%20EU%202019%20en.pdf)

³ Defined as those having an above-average use of IPR per employee, as compared with other IPR-using industries. As shown in the EPO-EUIPO Study, these industries are concentrated in manufacturing, technology and business services sectors.

⁴ Jobs generated by IPR-intensives industries in sectors dependent on these industries.

Table 2: Contribution of IPR-intensive industries to EU external trade (2016)

IP right	Exports (€ million)	Imports (€ million)	Net exports (€ million)
TOTAL EU TRADE	2,590,889	2,425,202	165,687
All-IPR industries	2,122,465	1,940,510	181,955
Copyright-intensive industries	294,856	202,738	92,119
Patent-intensive industries	1,438,117	1,307,850	130,267
Plant variety-intensive industries	7,552	3,885	3,667
Trade mark-intensive industries	1,613,366	1,600,703	12,663
GI-intensive industries	12,490	1,360	11,130
Design-intensive industries	1,261,774	1,194,885	66,889

Source: *IPR-intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, joint EPO/EUIPO study, 3rd edition, September 2019*

Note: due to overlapping use of IP rights, the sum of the figures for the individual IPR exceeds the total figure for IPR-intensive industries

In practical terms, IPR is directly linked to the production and distribution of new and authentic goods and services from which all citizens benefit. This requires an optimal and economically efficient IP "infrastructure" which covers the legal recognition, registration, utilisation, and effective and adequate enforcement of all forms of IPR in both physical and online marketplaces.

There are various practical challenges and limitations which have a negative impact on IP protection for EU companies in third countries such as forced technology transfer, procedural deficiencies, backlogs in rights registrations, non-registration of certain rights, non-deterrent level of sanctions, lack of expertise, corruption, lack of awareness and lack of transparency.

According to a recent EUIPO-OECD study on *Trends in Trade in Counterfeit and Pirated Goods* (2019)⁵, in 2016, counterfeit and pirated goods accounted for up to 3.3% of world trade and up to € 121 billion or 6.8% of EU imports from third countries. These numbers are alarming, in particular when compared to the figures of 2013 under the previous EUIPO-OECD study on *Mapping the economic impact of trade in counterfeit and pirated goods*

⁵ OECD/EUIPO (2019), *Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade*, OECD Publishing, Paris/European Union Intellectual Property Office.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/trends_in_trade_in_counterfeit_and_pirated_goods/trends_in_trade_in_counterfeit_and_pirated_goods_en.pdf

(2016)⁶: they indicate that the share of counterfeit and pirated goods in world trade increased by up to 10.4% and the share of fakes in EU imports by up to 42.3% between 2013 and 2016. The EUIPO's 2020 Status Report on IPR infringement⁷ contains the latest quantification of IPR infringements by sector in the EU. As illustrated in Table 3 below, IPR infringements have serious negative consequences for a large variety of sectors, not only in terms of lost revenue but also in terms of job losses.

Table 3: Quantification of IPR infringement by sector in the EU (average annual figures, 2013-2017)

Sector	Direct Lost Sales	% of Sales	Total Lost Sales	Direct Employment Loss	Total Employment Loss	Government Revenue Loss
Smartphones*	€ 4.2 bn	8.3%	Not calculated	Not calculated	Not calculated	Not calculated
Pesticides & Agrochemicals	€ 0.5 bn	4.2%	€ 1.0 bn	767	3 854	€ 0.1 bn
Pharmaceuticals	€ 6.0 bn	2.4%	€ 10.0 bn	20 040	48 253	€ 1.0 bn
Spirits & Wine	€ 2.3 bn	5.3%	€ 5.2 bn	5 681	31 858	€ 2.1 bn
Recorded Music	€ 0.1 bn	1.6%	€ 0.1 bn	280	644	€ 0.0 bn
Jewellery & Watches	€ 1.6 bn	11.5%	€ 3.0 bn	12 146	22 908	€ 0.5 bn
Handbags & Luggage	€ 0.9 bn	6.4%	€ 1.9 bn	6 715	13 691	€ 0.3 bn
Toys & Games	€ 1.0 bn	7.8%	€ 1.7 bn	3 930	8 380	€ 0.3 bn
Sports Goods	€ 0.6 bn	7.7%	€ 1.1 bn	3 286	6 579	€ 0.2 bn
Clothing, Footwear and Accessories	€ 23.3 bn	7.8%	€ 37.0 bn	263 196	373 476	€ 7.0 bn
Cosmetics & Personal care	€ 9.6 bn	14.0%	€ 17.9 bn	99 963	161 792	€ 3.5 bn
Total all sectors	€ 50.0 bn	6.4% (avg.)	€ 83.2 bn	416 004	671 435	15.0

Source: EUIPO, 2020 Status Report on IPR infringement

*Figures for this sector refer to 2015 only

Counterfeiting and piracy are a complex and growing problem. Evidence shows that organised crime groups are involved in counterfeiting and piracy and IP crime is linked to other types of crime (e.g. fraud, tax evasion, money laundering, narcotics, and human

⁶ OECD/EUIPO (2016), Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, OECD Publishing, Paris.

<https://euiipo.europa.eu/ohimportal/en/web/observatory/mapping-the-economic-impact>

⁷ EUIPO (June 2020), Status report on IPR infringement - Why IP Rights are important, IPR infringement, and the fight against counterfeiting and piracy.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2020_Status_Report_on_IPR_infringement/2020_Status_Report_on_IPR_infringement_en.pdf

trafficking). This is also confirmed in the EUROPOL-EUIPO report on the links between IP crime and other serious crime⁸, published in June 2020. The COVID-19 pandemic has also proved that criminals quickly adapt to the new trade environment and find their way to infiltrate the legitimate supply chain with their counterfeit and often dangerous products. Since the outbreak of the COVID-19 pandemic, counterfeit and falsified products, such as unproven treatments, test kits and medical equipment and supplies, e.g. masks, ventilators, or gloves, have flooded the European market. To tackle this issue, on 19 March 2020, the European Anti-Fraud Office (OLAF) opened an official inquiry into the illicit trade of face masks, medical devices, disinfectants, sanitisers, medicines and test kits linked to the COVID-19 pandemic and has teamed up with nearly all customs and enforcement authorities in Europe and many worldwide, as well as with Europol, Interpol and EUIPO. So far, OLAF's investigation has led to the identification of over 1,000 suspicious operators and to the seizure or detention of over 14 million items.

A report by Europol on *Viral Marketing, counterfeits, substandard goods and intellectual property (IP) crime in the COVID-19 pandemic*⁹ shows the counterfeiters have focused on goods used in the fight against the pandemic including medical equipment (especially face masks, fake test kits, disposable latex gloves, etc.), sanitisers and disinfectants (alcohol-based gels, soaps, disinfectant cleaning wipes, etc.) and pharmaceuticals (antivirals, medication for arthritis and malaria, herbal remedies, etc.). A joint study by EUIPO and OECD on *Trade in counterfeit pharmaceutical products*¹⁰, which was published on 23 March 2020, shows that in 2016, international trade in counterfeit pharmaceuticals reached € 4.04 billion.

Counterfeit and pirated products continue to follow complex trading routes, exploiting a set of intermediary transit points. The growth in Free Trade Zones (FTZs) enables counterfeiters, because FTZs provide exemptions from duty and taxes, simpler administrative procedures and duty-free import of raw materials, machinery, parts and equipment. Furthermore, according to the EUIPO-OECD study on *Trade in Counterfeit Goods and Free Trade Zones (2018)*¹¹, the existence, number and size of FTZs in a country correlate with increases in the value of counterfeit and pirated products exported by that country's economy. An additional FTZ within an economy is associated with a 5.9% increase in the value of these problematic exports on average. However, customs are usually less active in FTZs. Indeed, according to the EUIPO-OECD study on *Why Do Countries Export Fakes? (2018)*¹², FTZs offer a

⁸ Europol Report (2020), *IP Crime and its link to other serious crimes focus on poli-criminality*.

<https://www.europol.europa.eu/publications-documents/ip-crime-and-its-link-to-other-serious-crimes-focus-poly-criminality>

⁹ Europol Study (2020), *Viral Marketing, counterfeits, substandard goods and intellectual property (IP) crime in the COVID-19 pandemic*.

<https://www.europol.europa.eu/publications-documents/viral-marketing-counterfeits-substandard-goods-and-intellectual-property-crime-in-covid-19-pandemic>

¹⁰ OECD/EUIPO (2020), *Trade in Counterfeit Pharmaceutical Products*, Illicit Trade, OECD Publishing, Paris.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Trade_in_Counterfeit_Pharmaceutical_Products/Trade_in_Counterfeit_Pharmaceutical_Products_en.pdf

¹¹ OECD (March 2018), *Trade in Counterfeit Goods in Free Trade Zones*, OECD Publishing, Paris.

<https://www.oecd.org/gov/trade-in-counterfeit-goods-and-free-trade-zones-9789264289550-en.htm>

¹² OECD/EUIPO (2018), *Why Do Countries Export Fakes?: The Role of Governance Frameworks, Enforcement and Socio-economic Factors*, OECD Publishing EUIPO, Paris.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Why_do_countries_export_fakes/2018_Why_do_countries_export_fakes_OECD-EUIPO_report_EN.pdf

relatively safe environment for counterfeiters, with good infrastructure and limited oversight. The share of fake goods from economies hosting the 20 biggest FTZs is twice as big as from economies that do not host any FTZs.

According to the OECD-EUIPO study on *Illicit Trade-Trends in Trade in Counterfeit and Pirated Goods* (2019)¹³, Hong Kong (China), Singapore and the United Arab Emirates (UAE) are the top transit countries of counterfeits globally. Counterfeit goods arrive in these countries in large quantities in containers and are sent further in small parcels by post or courier services camouflaging the original point of production. The OECD-EUIPO study on *Mapping the real routes of trade in fake goods* (2017)¹⁴ and the EUIPO-OECD study on *Why do countries export fakes?* (2018)¹⁵ also confirms that Hong Kong (China), Singapore and the UAE are top transit hubs for counterfeits, notably in the following product categories: watches and jewellery, toys, games and sport equipment, foodstuff, clothing, articles of leather and footwear, perfumery and cosmetics, pharmaceuticals, electronic and electrical equipment.

Nearly 63% of customs seizures of counterfeit and pirated goods involved small parcels¹⁶. The use of small shipments for trade in fakes also keeps growing. Small shipments, sent by post or express services are a way for infringers to reduce the chance of detection and minimise the risk of sanctions. The proliferation of small shipments raises the cost of checks and detention for customs and introduces additional significant challenges for enforcement authorities¹⁷.

The OECD-EUIPO study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*¹⁸, which was published in February 2021, highlights that sea transport accounts for the largest share of value of counterfeits. 56% of the total value of seized counterfeits are shipped in containers, which is followed by mail couriers and air transport, with slightly more than 19% and 16% of the value of seizures respectively. The value of seizures concerning vehicle transport amounted to about 7%. Main counterfeit shipments are from East Asia, especially China and Hong Kong (China).

¹³ See footnote 5

¹⁴ OECD/EUIPO (2017), *Mapping the Real Routes of Trade in Fake Goods*, OECD Publishing, Paris.

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Mapping_the_real_routes_of_trade_in_fake_goods/Mapping_the_Real_Routes_of_Trade_in_Fake_Goods_en.pdf

¹⁵ See footnote 12

¹⁶ OECD/EUIPO (2018), *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends*, OECD Publishing, Paris

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Trade_in_fakes_in_small_parcel/Trade_in_Fakes_in_Small_Parcels_en.pdf

¹⁷ See footnote 16

¹⁸ OECD/EUIPO (2021), *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*, OECD Publishing, Paris

<https://euiipo.europa.eu/ohimportal/en/web/observatory/misuse-of-containerised-maritime-shipment>

2. METHODOLOGY

2.1. Sources

The Commission services conducted a public consultation between 7 September and 16 November 2020. The results of this consultation form the basis of the present report. In addition, a number of other sources have been taken into account in the selection of the priority countries and in the information provided on the state of IPR protection and enforcement in these countries.

In the public consultation, the Commission services sought specific information on the state of IPR protection and enforcement in countries outside the EU, including:

- (a) legal provisions which are not compatible with international norms and standards or which otherwise negatively affect the commercial exploitation of IPRs;
- (b) practical challenges and limitations (such as forced technology transfer, procedural deficiencies, backlogs in rights registration, non-deterrent level of sanctions, lack of expertise, corruption, lack of political will, lack of awareness and lack of transparency) which have a negative impact on IP protection and enforcement;
- (c) concrete examples of deficiencies of administrative and judicial mechanisms in the area of IPR (e.g. IP offices, customs, police and courts);
- (d) any other systemic problems in the country concerned, including information on the nature, scope and economic dimension of counterfeiting and piracy as well as on the level of cooperation between enforcement authorities and right holders; and
- (e) any action or measure taken by the respondent to address the problems identified and the outcome of such efforts.

Invitations to take part in the public consultation were sent to right holders, consumer groups, industry associations, universities, EU Delegations and EU Member States. More than 60 responses were received, covering more than 45 countries. The majority of the respondents were associations representing right holders (e.g. industry federations) and undertakings, mainly but not exclusively from the creative and innovative industries. Individuals, law firms, chambers of commerce and countries also participated in the public consultation.

As indicated in the public consultation, respondents are not identified and their contributions are not published.

Beyond the public consultation, the following additional sources have been taken into account in the preparation of the report:

- Information received from EU Delegations and commercial representations,
- Information received from the Commission's Directorate-General for Taxation and Customs Union on customs enforcement of intellectual property rights by EU Member States,
- Data on actions against IPR infringement published by various governments,
- Reports and studies by the European Intellectual Property Office (EUIPO),

- Reports and assessments made by other relevant bodies and organisations (e.g. the OECD),
- Information made public through WTO's Trade Policy Reviews,
- Assessments carried out by DG Trade's Market Access teams,
- Assessments of IPR systems by the Commission services,
- Judgments made by international bodies such as the WTO Dispute Settlement Body,
- The outcome of discussions Commission services have had with third countries in the context of IP Dialogues/Working Groups,
- Findings in EU IPR SME Helpdesk reports and reports made in the framework of the IP Key Programmes¹⁹,
- The 2020 Counterfeit and Piracy Watch List,
- World Intellectual Property Organisation's (WIPO) committee reports,
- Results from operations carried out by OLAF and EUROPOL.

2.2. Selection

The following indicators were used for the selection of the priority countries:

- Level of importance for EU operators,
- Level of counterfeiting and piracy,
- Level/quality of IP legislation,
- Level of effectiveness of the implementation of legislation,
- Attitude in bilateral relations and level of respect for IPR in international fora,
- Level of respect for legal decisions in international fora (WTO Dispute Settlement),
- Level of economic development (e.g. Gross National Income per capita levels, World Bank index ranking).

3. UPDATED LIST OF PRIORITY COUNTRIES

As in previous Third Country Reports, the updated list of priority countries remains split into three categories:

Priority 1: China

Priority 2: India, Russia, Turkey and Ukraine

Priority 3: Argentina, Brazil, Ecuador, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand

China continues to be a **Priority 1** country for the EU because of the scale and persistence of problems in the area of IPR protection and enforcement. The Commission's report on *EU Customs Enforcement of IPR* (2019)²⁰ and the EUIPO-OECD study on *Illicit Trade - Trends in Trade in Counterfeit and Pirated Goods* (2019)²¹ show that China is at the origin of a dominant share of counterfeit and pirated goods arriving in the EU, in terms of both value and

¹⁹ <https://ipkey.eu/en>

²⁰ Commission's Report on *EU Customs Enforcement of intellectual property rights* (2019) https://ec.europa.eu/taxation_customs/sites/taxation/files/ipr_report_2020.5464_en_04.pdf

²¹ See footnote 5

volume. More than 80% of the seizures of counterfeit and pirated goods by EU customs authorities originate from China and Hong Kong (China).

India, Russia, Turkey and Ukraine remain **Priority 2** countries. Serious systemic problems have been identified in the area of IP protection and enforcement in these countries, causing significant harm to EU businesses. Compared to the previous report, these countries have made no progress or only limited progress in addressing these concerns.

Argentina, Brazil, Ecuador, Indonesia, Malaysia, Nigeria, Saudi Arabia and Thailand remain **Priority 3** countries. Priority 3 countries show some serious problems in the area of IP, causing considerable harm to EU businesses. The gravity and the number of problems identified in these countries are lower than in Priority 2 countries.

Indonesia was removed from the group of Priority 2 countries and included in the group of Priority 3 countries mainly due to its recent reform to the Indonesian patent law. Indonesia's new local working requirement complies with international standards and covers the manufacturing, importation and licensing of the patented invention in Indonesia.

In addition, this report dedicates again a section to some of the countries with which the EU has already concluded or is about to conclude free trade agreements and where there is a particular need to monitor the IP situation. This category of countries includes Canada, South Korea, Mexico and Vietnam. Monitoring is also required in other countries.

The provisions on the protection of geographical indications contained in the EU-Colombia, Peru and Ecuador Trade Agreement and in the EU-Central America Association Agreement also need to be closely monitored with regard to issues related to the recognition of EU GIs as well as concerns regarding their effective protection, in order to make sure that any observed usurpation is addressed in an efficient manner. There are also concerns as regards proofs of prior users entitled to use protected terms and effective protection of individual terms of compound names.

4. SUMMARY OF THE FINDINGS

Forced technology transfer practices continue to be a systemic problem in China. These practices discourage investment and put foreign operators – particularly in high-tech sectors – at risk of losing their competitive edge.

A low level of protection for trade secrets in a number of countries, notably in China, India and Russia, also causes irreparable harm to European businesses.

Weak IPR enforcement continues to be an acute problem in all the countries listed in the report. The main problems with IPR enforcement are linked to the lack of political will or resources. This materialises in deficiencies in adequate technical infrastructure, capacities and resources, expertise of the judicial and enforcement authorities, weak coordination between enforcement authorities, non-deterrent sanctions against IPR infringements as well as insufficient public awareness of the value of IPR.

The level of counterfeiting remains high in many of the EU's trading partners, causing serious revenue losses for both the EU and local industry. The problem is particularly serious in China, which continues to be the main source country of counterfeit goods imported into

the EU. India and Southeast Asian countries such as Indonesia, Malaysia, Thailand and Vietnam are also significant sources of counterfeits while regional transit hubs such as Hong Kong (China), Nigeria, Saudi Arabia, Singapore and Turkey also continue to play an important role in this context.

Copyright piracy, especially online and satellite piracy, remains a major issue for European creative sectors. The problem remains widespread and rampant in countries such as China, Indonesia, Mexico, Russia, Saudi Arabia, Thailand, Ukraine, Vietnam, as well as Brazil despite the recent developments.

A serious problem in the area of enforcement is the **lack of authority for customs authorities to take *ex officio* actions** to detain, seize or destroy counterfeit and pirated goods at the border or to take action with respect to goods in transit. The empowerment of customs authorities to take action *ex officio* would be needed in Ecuador, Mexico and Saudi Arabia. In Turkey, customs authorities would need to apply *ex officio* actions more frequently and Argentina would need to improve the consistency of *ex officio* customs actions. Improvements would be needed also in the border enforcement regimes of Canada, India, Indonesia, and Thailand.

Stakeholders also report that **counterfeit and pirated goods are often not destroyed** by the enforcement authorities and find their way back to the market. On other occasions, **destruction procedures take too long or may be dissuasively expensive** for right holders. Concerns related to the destruction of infringing or allegedly infringing goods were reported with respect to China, India, Indonesia, Malaysia, Mexico, Nigeria, Saudi Arabia and Ukraine

As regards **sanctions and penalties imposed for IPR infringements**, stakeholders report they **are too low to have a deterrent effect** in countries such as Argentina, Brazil, India, Nigeria, Russia, Saudi Arabia, South Korea, Thailand, Turkey, Ukraine, and Vietnam.

As regards the **registration of patents, trademarks and related procedures** (e.g. renewal or opposition), the IP Offices in Argentina, Brazil, India and Thailand have a considerable backlog. The duration of patent examination in some countries, such as Brazil and Thailand, is overly long and covers most of the patent term.

Restrictive patentability criteria applied in Argentina, India, Indonesia, Ukraine and Russia reduce or remove incentives to innovate, for instance in order to find more stable forms of compounds with longer shelf-lives, medicines which may be easier to store, dosages which are safer or reduce side-effects.

Another area of continued concern reported by right holders is the **system for protecting undisclosed test and other data generated to obtain a marketing approval** for pharmaceuticals in Argentina, China, India, Indonesia, Malaysia, Russia and Saudi Arabia and for agrochemical products in Argentina, Brazil, Turkey and Malaysia.

In the area of copyright and related rights, problems with the functioning of the system of **collective management of rights** in Nigeria, Russia, Ukraine, Thailand and Turkey cause losses for right holders and create mistrust amongst users, which ultimately has a negative effect on the creative industries in these countries.

As far as the **protection and enforcement of plant variety rights** are concerned, EU breeders face problems which can be grouped as follows: lack of effective legislation on plant variety rights in accordance with the 1991 Act of the International Convention for the Protection of New Varieties of Plants; absence of UPOV membership; the non-availability of the UPOV PRISMA online application system for new plant varieties and the lack of an effective system for the collection and enforcement of royalties at administrative levels. With regards to the lack of effective legislation, the most relevant problems are the overly broad exceptions to the breeders' rights and the limited scope of protection. EU stakeholders have reported Argentina, Ecuador, Russia, Turkey and Ukraine for deficiencies in their plant variety rights' regime. It is worth noting that China and India have initiated the procedure to accede to the UPOV Convention.

Various trading partners of the EU have not yet acceded to important international conventions. India, Indonesia, Argentina, Brazil, Ecuador, Malaysia, Mexico, Nigeria, Saudi Arabia, Thailand, have not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants and with the exception of Mexico and Vietnam have not yet acceded to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs. Argentina, Ecuador, Nigeria, Saudi Arabia, have not yet acceded to the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Brazil, Saudi Arabia, Thailand and Vietnam have not yet acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Argentina has not yet acceded to the Patent Cooperation Treaty.

5. EU ACTIVITIES IN THE CONTEXT OF IPR

5.1. Bilateral and Regional Level

5.1.1. Trade negotiations

The EU is negotiating a series of **bilateral and regional trade agreements** that include comprehensive IPR chapters. The IPR chapters aim at setting comparable levels of IPR protection to those existing in the EU, while taking into account the level of development of the trading partners. **In doing so, the EU seeks to go beyond the TRIPS Agreement** to address new challenges, most notably the need to protect IPR in the digital environment. The EU also promotes adequate enforcement rules in its trade negotiations.

Since the last Third Country Report, the EU has concluded an agreement (including IPR chapters) with Vietnam; and finalised or is about to finalise the negotiations with Kyrgyzstan, Mercosur, Mexico and the UK. Negotiations are currently ongoing with Australia, Azerbaijan, Chile, Indonesia, New Zealand, Tunisia and Uzbekistan. The EU and China have also concluded a bilateral agreement on Geographical Indications (GI).

5.1.2. IP Dialogues and IP Working Groups

The Commission services engage in IP Dialogues and IP Working Groups with partner countries around the world, including those with which an agreement is in place covering IP issues. In this context, since the last Third Country Report, the Commission has had such dialogues or working groups with countries of the Andean Community (Colombia, Peru and

Ecuador), Central America, Canada, China, Hong Kong (China), India, Mexico, South Korea, Taiwan, Thailand, Turkey, Ukraine and the US.

Concerning GIs, continuous dialogue and the organisation of technical cooperation aim at improving the understanding of the trading partners in view of better addressing cases of insufficient or poor protection.

5.1.3. Technical assistance programmes

The Commission operates various EU-funded technical cooperation programmes that aim to strengthen IPR protection and enforcement in third countries and/or to assist EU right holders seeking IP protection in those countries.

The Commission steers **three IP Key cooperation programmes**²² for the period 2017-2021: China (€ 7 million), Southeast Asia (€ 7 million) and Latin America (€ 6 million). These multi-annual IP programmes, implemented and co-funded by the EUIPO, continue enhancing the EU's cooperation with the respective countries or regions through concrete activities in the area of IPR protection and enforcement. IP Keys continue providing relevant support to negotiations and implementation of EU trade agreements as well as IP Dialogues. The Commission has adopted in 2020 a decision setting the basis for the follow-up of the three IP Key programmes for a period of three years.²³

The Commission launched a **four-year cooperation programme for Africa (AfrIPI)**, in September 2020 with the aim to improve the standards of protection and enforcement of intellectual property rights in the African continent and to support the Pan-African Free Trade negotiations. The budget of AfrIPI is € 17.1 million and the programme is implemented and co-funded by the EUIPO. The programme intends a) to promote international agreements in the area of IPR and to reinforce cooperation between the EU and Africa, b) to strengthen national and regional IP institutions, networks and tools for more efficient and user-friendly IP protection and enforcement systems, c) to strengthen the capacities of MSMEs concerning the importance and value of IP in the African society and d) to implement priority actions identified by the work plan linked to the African Continental Strategy for GIs.

The Commission also continues contributing to the Africa GI Consultative Committee, established to ensure an effective implementation of the African Continental Strategy for GIs²⁴.

The **ASEAN Regional Integration Support** from the EU (ARISE Plus) programme²⁵, implemented and co-funded by the EUIPO, has continued with the aim of supporting greater

²² <http://www.ipkey.org/en>

²³ See Commission Implementing Decision of 1.12.2020 amending Commission Implementing Decision C(2020)2779 of 5.5.2020 on the financing of the 2020 Partnership Instrument Annual Action Programme for cooperation with third countries to be financed from the general budget of the European Union: https://ec.europa.eu/fpi/sites/fpi/files/documents/commission_implementing_decision_aap2020_ii_2.pdf

²⁴ The Commission brings together continentally IP actors, including the African Union Commission, the two African IP regional offices (Organisation Africaine de la Propriété Intellectuelle and African Regional Intellectual Property Organization), Food and Agriculture Organization, WIPO and the Agence Française de Développement.

economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus, the EU supports ASEAN regional integration and further upgrades and improves the systems for IP creation, protection, utilisation, administration and enforcement in the Southeast Asia, in line with international IP best practice and standards and the ASEAN IPR Action Plan 2016-2025. The COVID-19 pandemic significantly reduced the number of activities that the project could implement in 2020.

5.2. Multilateral Level

5.2.1. WTO

The Commission is an active contributor to IP protection and enforcement at multilateral level, in particular in the WTO TRIPS Council. In 2020, the Commission co-sponsored discussions on “Making MSMEs Competitive” with the so-called “Friends of IP and Innovation” (FOII) like-minded group, which includes countries such as Australia, Canada, Japan, Switzerland, Singapore, Norway and the US. These discussions provide an overview of WTO Members’ national and international IP policies, initiatives and case studies, which is a useful reference for legal, regulatory and policy developments. In particular this year, the FOII Group discussed the IP management issues that affect MSMEs’ growth and development and enable them to develop innovative products and services to address pressing global challenges such as Making MSMEs competitive through trademarks, Making MSMEs competitive through combination of IPRs and Making MSMEs competitive in green tech.

The EU has submitted annual reports²⁶ on actions taken or planned in pursuance of its commitments under Article 66.2 of the TRIPS Agreement (incentives provided to their enterprises or institutions for the purpose of promoting and encouraging technology transfer to least developed country Members). In addition, the EU has submitted annual reports²⁷ in accordance with Article 67 of the TRIPS Agreement on technical cooperation programmes provided by the European Union and EU Member States in favour of developing and least developed country Members, with the objective to facilitate the implementation of the TRIPS Agreement.

5.2.2. WIPO

Concerning GIs, the European Commission deposited its instrument of accession to the *Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications*, an international agreement administered by WIPO, on 26 November 2019. As it was the fifth eligible party to join, the EU’s accession allowed for the entry into force of the Geneva Act in

²⁵ https://eeas.europa.eu/delegations/indonesia/49555/arise-plus-indonesia-eu-commits-%E2%82%AC10-million-help-indonesia-grow-trade_en

²⁶ IP/C/W/655/Add.6

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=260986&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

²⁷ IP/C/R/TC/EU/1

https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=267251&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

February 2020. The Geneva Act revised and modernised the Lisbon Agreement of 1958 for the Protection of Appellations of Origin and their International Registration, expanding the scope beyond appellations of origin to all GIs.,

The Commission is actively engaged also in WIPO's work on the enforcement of IPRs. This concerns in particular, but not exclusively, the Advisory Committee on Enforcement (ACE)²⁸. The Commission also supports WIPO ALERT²⁹, and ensures synergies³⁰ between this initiative and the Memorandum of Understanding on online advertising and IPR³¹.

5.2.3. OECD

The European Commission has been actively involved in the implementation of the *OECD Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones*³². This Recommendation, adopted on 21 October 2019, proposes measures to enhance transparency in free trade zones in order to prevent criminal organisations from taking advantage of them. As part of the implementation, the OECD Task Force to Counter Illicit Trade, which was responsible for the preparation of the Recommendation, is developing a mechanism (diagnostic tool) for the assessment of the performance and the compliance of FTZs with the Code of Conduct and a toolkit to support adherents in the implementation of the Recommendation. The Commission contributes to the work of the OECD TF-CIT in the development of the two toolkits.

In addition, the EUIPO contributed to the preparation of two OECD-EUIPO studies. In March 2020 the EUIPO and the OECD released the study on *Trade in counterfeit pharmaceutical products*. Launched in the early stage of the global COVID-19 pandemic the study gathered substantive attention of public stakeholders and media. In addition to the economic damages for the pharmaceutical industry and the lost revenues for governments, the study also highlights that counterfeit medicines cause a significant threat to public health, since they are often not properly formulated and may contain dangerous ingredients, and have also an environmental impact due to dirty practices involving potentially toxic chemicals.

The EUIPO also contributed to the preparation of the study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*³³ which was released in February 2021. The study provides a detailed analysis of economy- and industry-specific patterns of

²⁸ The Advisory Committee on Enforcement (ACE) (<https://www.wipo.int/enforcement/en/ace/>) was established by the 2002 WIPO General Assemblies with a mandate to carry out technical assistance and coordination in the field of enforcement. The ACE focuses on coordinating with public and private organisations to combat counterfeiting and piracy, public education; assistance, coordination to undertake national and regional training programs for all relevant stakeholders, and exchange of information on enforcement issues.

²⁹ WIPO ALERT is a secure, online platform to which authorised bodies in WIPO member states can upload details of websites or apps which have been determined to infringe copyright according to national rules. <https://www.wipo.int/wipo-alert/en/>

³⁰ For example, the European Commission updated participants on the MoU on online advertising and IPR during the third WIPO ALERT stakeholders' meeting in December 2019; a representative of WIPO presented the WIPO ALERT during the meeting of the MoU on online advertising and IPR in September 2020.

³¹ The MoU on online advertising and IPR is a voluntary agreement facilitated by the European Commission to limit advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods. https://ec.europa.eu/growth/industry/policy/intellectual-property/enforcement/memorandum-of-understanding-online-advertising-ipr_en

³² *OECD Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones* <http://www.oecd.org/gov/risk/recommendation-enhancing-transparency-free-trade-zones.htm>

³³ See footnote 18

maritime trade with the use of containers and sheds light on the misuse of such means of transport. It also looks at the sources of counterfeits being shipped in containers and the ports of entry into the European Union.

The studies jointly prepared by the OECD and the EUIPO provide essential evidence helping policy makers to better address the problem of illicit trade and raising awareness on the negative impact of counterfeit not only for the economy but also for the health and safety of consumers and the environment.

5.3. Other Activities

On 14 December 2020, DG Trade published the Counterfeit and Piracy Watch List³⁴, which presents examples of reported marketplaces and service providers whose operators or owners are allegedly resident outside the EU and which reportedly engage in, facilitate or benefit from counterfeiting and piracy. The aim of the Watch List is to urge the operators and owners as well as the responsible local enforcement authorities to take the necessary actions and measures to reduce the availability of IPR infringing goods or services and to raise consumer awareness.

6. COUNTRY-SPECIFIC ANALYSIS

6.1. Priority 1

China

Progress

China concluded a structural reform of its IP administration last year. The National Copyright Administration of China (NCAC) remains responsible for copyright and the Ministry of Agriculture and Rural Affairs deals with agricultural GIs. All other IPRs form the portfolio of the new Chinese National Intellectual Property Administration (CNIPA), which replaces the State Intellectual Property Office of China (SIPO). The new State Administration for Market Regulation (SAMR) centralises enforcement matters and reports to the State Council.

China's IP court system has improved. On the one hand, the number of specialised IP courts or tribunals has grown up to roughly 20 across the country. China also created a specialised IP court as part of the Supreme People's Court (SPC) to focus mainly on patent cases. This competence for harmonising court rulings on IP at the SPC has the potential of increasing the coherence of court decisions at all levels. China has also established specific Internet Courts in Hangzhou, Beijing and Guangzhou.

China has made substantial efforts to review and update its IP legislation. The new patent law includes a number of positive elements, such as the patent right extension to compensate for the time needed for review and approval of the innovative drugs for marketing purposes, and an increase in the amount of damages that can be ordered by the court. In principle, it also brings the provisions on industrial designs in line with the Geneva Act of the Hague

³⁴ Counterfeit and Piracy Watch List
https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159183.pdf

Agreement concerning the International Registration of Industrial Designs, for example with regard to the length of protection. The revised copyright law introduces rights of producers for the use of phonograms for broadcasting or communication to the public, improves the provisions on collective rights management in terms of transparency rules and increases the amount of damages that courts can order. EU stakeholders would also welcome the conclusion of the ongoing revision of the law on plant varieties, which would bring China closer to joining the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

Other improvements in IP law include amendments to the trademark law. They aim at addressing bad faith applications and introduce or strengthen provisions on the trademark agency's liability, the amount of damages and the destruction of counterfeit goods. Amendments to the anti-unfair competition law strengthen the legal basis for Chinese authorities to address trade secrets theft.

Concerns and areas for improvement and action

Stakeholders welcome the progress of the IP law in China but remain concerned about the lack of clarity of legal provisions, which often seem to grant the authorities an unusually broad margin of discretion for the practical implementation of laws and regulations. They also stress the importance of the non-discriminatory implementation of the new rules.

Stakeholders continue to raise concerns about the inconsistency of the court decisions among different provinces; the governance and the independence of courts; and a tendency of court rulings to favour Chinese stakeholders when strategic sectors or companies, in particular state-owned enterprises, are concerned. EU stakeholders generally raise concerns about the **discrimination** of foreign right holders in comparison with local right holders, both in court proceedings and by other enforcement authorities. This appears to be particularly problematic regarding trade secrets in administrative and court proceedings.

In line with Chinese declared policy to increase its domestic technology base, the number of Chinese **patent** and **utility model applications** is growing fast. Quantity-based top-down incentives set by the Chinese government centrally and locally seem to play a significant role. A prominent example is China's patent commercialisation strategy set out in the 2014-2020 IP Strategy³⁵. The wide use of utility models leads to dense groups of IPR in certain fields of technology ('patent-thickets'), hindering the patentability and commercialisation of new inventions. Therefore, EU stakeholders see the huge number of utility models granted in China as a major challenge. They call on rationalising the registration of utility models, e.g. by imposing stricter enforcement requirements and by introducing a higher threshold as regards the inventive step.

Serious concerns also remain about the quality of granted patents, which might be further exacerbated by the recent quantitative goals set for state-owned enterprises.³⁶ Another problem highlighted by stakeholders is the frequent use of invalidation proceedings against patents of foreign companies that sought legal protection against Chinese infringers. In

³⁵ <https://chinaipr.com/2014/12/30/action-plan-for-further-implementation-of-the-national-ip-strategy-2014-2020-approved/>

³⁶ SASAC and CNIPA jointly released 'Guiding opinions on advancing central SOEs' work on intellectual property'.

addition, pharmaceutical patent owners complain about Chinese authorities approving unlicensed generic products for marketing while originators' patents are still in force.

EU companies hold a number of important **standard essential patents** (SEPs) for technologies such as the telecommunication standard '4G' and '5G'. EU stakeholders report that Chinese companies widely use these technologies without paying adequate royalties, appearing to coordinate among themselves or with government agencies on patent hold-out strategies. In this context, Chinese competition authorities are reported to often impose heavy fines on foreign holders of SEPs, setting unreasonably low royalty rates, or using "informal" investigations to influence business-to-business negotiations. Moreover, Chinese courts seem to undervalue foreign patents and overvalue Chinese ones. The applicable rules and guidelines do not ensure sufficient legal certainty. A recent phenomenon are the so-called 'anti-suit injunctions' issued by Chinese courts. They aim at prohibiting foreign holders of SEPs from enforcing their rights in any other jurisdiction than China. This practice seems to have the support of the highest judicial authorities, since a recent amendment of the Supreme People's Court's model cases elevated one of the recent decisions on an anti-suit injunction into a model case.

With respect to **trademarks**, the main concern in China continues to be the registration of bad faith applications. China's trademark law has recently been amended. However, according to EU right holders, the continuous flow of bad faith registrations has not stopped. One can also see the continuation in the trend away from the production and sale of direct trademark infringements to more instances of 'lookalike' products appearing as legitimate businesses' packaging designs and shapes. In addition, the lack of recognition of the well-known trademark status has been a long standing problem for European stakeholders with well-established reputation and sizable operation in China. The Chinese recognition practice, e.g. on sufficiency of evidence, has been inconsistent and unclear. The courts' focus on well-known status within China and the predominant acceptance of Chinese evidence are detrimental to the protection of well-known foreign trademarks.

EU stakeholders welcomed the revision of the law to extend the term of protection of industrial **designs** to 15 years. This would be in line with the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and pave the way to China's possible accession to it, which the EU would welcome. However, serious problems persist on industrial designs, among others, bad faith applications.

In the area of **copyright and related rights**, the long-awaited amendment of China's law has not provided for the extension of the term of protection for authors, performers and phonogram producers to 70 years.

EU stakeholders raise concerns regarding **regulatory data protection**. China appears to grant regulatory data protection only to pharmaceutical products when they have never been marketed in any country. This practice would de facto discriminate against foreign products since they do not benefit from regulatory data protection in China if previously approved in another country.

As regards **trade secrets**, EU stakeholders are concerned about the ineffective protection in administrative and regulatory proceedings in which they are required to disclose confidential business information. Despite the recent changes to the relevant Chinese laws, EU companies

face difficulties in obtaining effective protection before courts against unfair commercial use and unauthorised disclosure of business information.

Another fundamentally important trade irritant is China's objective to absorb foreign technology and make it Chinese ('re-innovate'), particularly in key technological areas defined by the state, such as through the Made in China 2025 strategy. The policy tools employed to reach this objective are manifold. The law on scientific and technological progress³⁷ provides that IPR and technology obtained in projects funded by the Chinese government should be preferably used within China. This is reinforced by the 2018 State Council Measures on the Transfer of Intellectual Property Rights to Foreign Parties, which make the transfer of IPR to foreign entities subject to approval by Chinese authorities³⁸. Stakeholders also report that Chinese public procurement procedures are used to require foreign companies to disclose their technology or know-how.

Induced or **forced technology transfer** (FTT) continues to be a systemic problem in China³⁹. It is a complex phenomenon which includes a variety of practices carried out by the government or government-influenced private parties that require, pressure or induce foreign firms to transfer their technology to China in exchange for market access, investment access or other administrative approvals. For example, China forces foreign companies to license technology, often at below market rates, as a pre-condition to access and operate on certain markets. Such technology transfers are induced or forced through policy guidance, legal instruments and practices, including through joint venture requirements/equity caps, authorisation or licensing procedures and insufficient protection of intellectual property rights or trade secrets.⁴⁰ This is possible in the Chinese regulatory and administrative environment, since China confronts foreign companies with often opaque and cumbersome licensing and authorisation systems, as well as a lack of proper administrative review possibilities, leaving ample room for the authorities, sometimes in coordination with Chinese joint-venture partners, to extract foreign technology. At the same time, China is making it more difficult to transfer technology from China to Europe.⁴¹

The Commission services take note of the prohibition of forced technology transfer introduced by the Foreign Investment Law⁴² as well as of the removal of restrictions on the use of certain licence conditions from the Technology Import and Export Regulations (TIER)⁴³ and will monitor the implementation of those new provisions, including through the enforcement of the related provisions of the EU-China Comprehensive Investment Agreement (CAI) once it is ratified.⁴⁴

³⁷ Law of the People's Republic of China on Progress of Science and Technology, Order No. 82 of the President of the People's Republic of China (available at http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042277.htm)

³⁸ http://www.gov.cn/zhengce/content/2018-03/29/content_5278276.htm

³⁹ The transfer of technology is a normal development in the economic process of a catch-up economy and unproblematic as long as it is voluntary and based on market terms and conditions.

⁴⁰ For an overview of technology transfer practices see: https://www.oecd-ilibrary.org/trade/international-technology-transfer-policies_7103eabf-en

⁴¹ China's Ministry of Commerce and Ministry of Science and Technology jointly issued Announcement No. 38 to amend the Catalogue of Technologies Prohibited or Restricted from Export.

⁴² See http://www.fdi.gov.cn/1800000121_39_4872_0_7.html

⁴³ State Council Decision no. 709, paragraph 38 of March 2019

⁴⁴ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2115>

While acknowledging the efforts of the Chinese government to fight **counterfeiting**, the measures in place do not seem yet to keep pace with new technologies and the sheer amount of infringements. According to the OECD-EUIPO study on *Mapping the economic impact of trade in counterfeit and pirated goods* (2016)⁴⁵, China is the world's main producer of counterfeit goods. According to the OECD-EUIPO study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*⁴⁶, China appears as the largest provenance economy for container shipments, being the origin of 79% of the total value of maritime containers containing fakes seized worldwide. According to the OECD-EUIPO study on *Misuse of Small Parcels for Trade in Counterfeit Goods* (2018)⁴⁷, China is main country of origin for small parcel trade in counterfeit goods. The OECD-EUIPO study on *Illicit Trade - Trends in Trade in Counterfeit and Pirated Goods* (2019)⁴⁸, also confirms that China is the number one source country of counterfeit goods, based on the number of customs seizures by the EU customs authorities. According to the study 54% of the counterfeit goods seized by the EU customs authorities comes from China. The Commission's report on *EU customs enforcement of IPR* (2019)⁴⁹ shows that around 80% of seized counterfeit goods by article came from China, including Hong Kong (China). This includes the production of all types of fakes such as technologically advanced items, expensive fashion items as well as fake medicines, personal protective equipment and toys, which are potentially dangerous for consumers. While stakeholders acknowledged the efforts made by the Chinese authorities to improve the situation, they also underlined that it remains very problematic. Benefitting from the COVID-19 crisis, counterfeiters located in China have been manufacturing and selling counterfeit personal protective equipment, including face masks, emergency protective clothing, sanitizers, testing kits, cardiovascular equipment and even non-effective COVID-19 remedies and treatments putting European and global health at risk. The latest EUIPO-OECD study on *Trade in Counterfeit Pharmaceutical Products* (2020)⁵⁰ concludes that China is one of the largest identified producers of counterfeit pharmaceuticals.

The digital environment has clearly aggravated the situation in recent years, since the proliferation of online trading platforms provides wider and easier access to Chinese counterfeit and pirated products at global level. Despite the e-commerce law that was adopted in 2018 and entered into force in 2019, stakeholders raise concerns in relation to the notice and take down procedure. They report that certain rules in the law render enforcement difficult. These include, for example, the lack of a right by the IPR owner to file a rebuttal to the vendor's claim that he or she is selling rightfully or the short 15-day window for the filing of formal infringement complaints to relevant authorities.

Important shortcomings of **IPR enforcement** in China are due to, among others, significant differences between its various provinces and cities. Stakeholders report that, in general, the standards of administration and courts in cities like Beijing, Shenzhen or Shanghai are more satisfactory and they expect them to improve further. However, lack of expertise continues to be a serious problem in the less developed provinces of China. There is inconsistency in the

⁴⁵ See footnote 6

⁴⁶ See footnote 18

⁴⁷ See footnote 16

⁴⁸ See footnote 5

⁴⁹ See footnote 20

⁵⁰ See footnote 10

judicial practice between the local courts and the Supreme People's Court, which undermines legal certainty and renders court proceedings unpredictable in China.

Stakeholders report that it remains difficult to take action against counterfeiters in Chinese marketplaces. The enforcement authorities, at local, provincial and central level alike, reportedly remain inefficient and often unresponsive to right holders' complaints. Stakeholders report that the lack of resources in the enforcement authorities and local protectionism hamper enforcement. Despite the growth in criminal proceedings, large-scale organised crime groups involved in counterfeiting remain largely unaffected.

Stakeholders report that burdensome evidentiary requirements undermine the effectiveness and availability of enforcement action in China. The evidence notarisation requirement is singled out by stakeholders as particularly burdensome, especially during the COVID-19 pandemic.

Another recurrent enforcement concern relates to the difficulty to obtain **interim injunctions**, despite their paramount importance for effective IPR protection and enforcement. Additionally, stakeholders indicate that the amount of **damages** actually awarded for IPR infringements often neither compensates for losses nor deters future infringements.

Stakeholders also generally point to deficient cooperation between different administrative and law enforcement agencies competent to address IPR infringements, and to the difficulties for foreign right holders to obtain coordinated enforcement action from those authorities.

Stakeholders also express major concerns about the expected consequences of the Chinese Belt & Road Initiative (BRI). They highlight that strict measures will be necessary, in particular in the area of customs controls, to avoid the increase in the flow of counterfeit goods from China into the EU and raise concerns of Chinese ownership of European port infrastructure facilitating the entry of counterfeit products into the EU.

Stakeholders from the creative industries report widespread copyright infringement, including unauthorised translations of books, the illegal sale of log-in details to subscription platforms providing lawful access to copyright content and websites offering pirated e-books. Stakeholders also report that circumvention devices designed to circumvent the technological protection measures on video game consoles and authentic games is widespread. The lack of adequate legal protection and effective legal remedies against the circumvention of technological protection measures and the manufacture and distribution of circumvention devices causes irreparable harm to right holders. China reportedly remains also the main source of illegal IPTV receivers and set-top boxes destined for the EU market.

With regard to international treaties, China has not yet ratified the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and has not acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

Different tools and mechanisms have been deployed to support China's efforts to improve IPR protection and enforcement.

The EU-China **Comprehensive Agreement on Investment (CAI)** addresses certain aspects of the protection of trade secrets, such as mandating to keep confidential business information protected when submitted to public authorities in the context of administrative procedures and by prohibiting the direct or indirect interference of public authorities in market-based technology transfer. The relevant provisions consist of the prohibition of several types of investment requirements that compel transfer of technology, such as requirements to transfer technology to a joint venture partner, as well as prohibitions to interfere in contractual freedom in technology licensing. The rules also include disciplines on the protection of confidential business information collected by administrative bodies (for instance in the process of certification of a good or a service) from unauthorised disclosure. The agreed rules significantly enhance the disciplines in WTO but still have to be ratified by the EU and China.

The **EU-China Dialogue** has been in place for fourteen years. This mechanism has allowed both sides to exchange views on a wide range of IPR issues. It comprises two components: the EU-China IP Dialogue at strategic level and the EU-China IP Working Group at technical level.

The technical cooperation programme **IP Key China**⁵¹, provides for concrete opportunities to strengthen cooperation and exchange best practices in priority areas, with a view to improving IPR protection and enforcement in China. The latest IP Key China programme started in September 2017 and will be running for four years.

The EU-China **Joint Customs Cooperation Committee** also represents a relevant avenue of cooperation on IPR enforcement, despite reported shortcomings in data sharing. It was established in 2009 and is in charge of the overall framework for customs cooperation and for the EU-China Customs IPR action plan that is currently updated.⁵² Since many goods suspected of infringing IPR come from Hong Kong (China), the Commission has also established an action plan on cooperation in customs enforcement of IPR directly with authorities in Hong Kong (China)⁵³.

The Commission has also established an **IPR SME Helpdesk** in China⁵⁴, in support of the EU's small and medium sized enterprises which seek to protect and enforce their IPR in China. The services and information provided by the IPR helpdesk, such as the helpline, trainings and web-based materials are free of charge. The term of the China IPR SME Helpdesk was extended for another three years at the beginning of 2018.

The EU and China signed a **bilateral GI agreement** to protect close to 100 European GIs⁵⁵ in China and 100 Chinese GIs in the EU against imitations and usurpation.⁵⁶ 175 additional names on each side will benefit from the same level of protection within four years of entry into force of the agreement. The Agreement has entered into force on 1 March 2021.

⁵¹ <https://ipkey.eu/en/china>

⁵² https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/action_plan_eu_china_ipr_2014_2017.pdf

⁵³ The Action Plan on Cooperation in Customs Enforcement of Intellectual Property Rights in the European Union and Hong Kong (China) is not public.

⁵⁴ <http://www.china-iprhelpdesk.eu/frontpage>

⁵⁵ Due to UK leaving the EU, the number of EU GIs effectively protected at the entry into force is 96

⁵⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6200

The EUIPO and CNIPA signed an agreement on the exchange of trademark data in September 2020.

6.2. Priority 2

India

Progress

A number of improvements can be noted in India's IPR protection. In 2019, India has acceded to the Locarno Agreement on the international classification for the industrial designs and the Vienna Agreement concerning the international classification for figurative elements of marks. India also initiated the procedure to accede to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. In 2020, draft amendments to the copyright, GIs, designs and patent rules were under consideration. In April 2019, the Delhi High Court issued its first dynamic blocking order to stop a pirate site. There have been notable positive efforts in the form of enforcement action against online copyright piracy by the Telangana Intellectual Property Crime Unit (TIPCU) and the Maharashtra Cyber Digital Crime Unit, but there are no similar dedicated units in other states yet.

India seems to continue its focus on administrative improvements, awareness raising and capacity building with a view to improving the efficiency of its IPR system. Streamlined and modernised processes to grant patents and register trademarks were introduced and new examiners were also recruited to address the backlog in processing applications and examinations. E-filing and online search facilities were developed to streamline the registration of designs; as a result, the average time for registration was reduced from eight months to one. The voluntary registration of copyrights has become also computerised, and it is now possible to check the status of the applications in real-time⁵⁷. Other positive developments include the Scheme for Start-ups Intellectual Property Protection (SIPP) and the draft patent (Amendment) rules, in 2019.

The website of the Cell for IPR Promotion and Management (CIPAM),⁵⁸ established by the Ministry of Commerce and Industry, provides the most recent statistics on patent, design, trademark and copyright applications as well as free of charge educational resources available for download.

Concerns and areas for improvement and action

Several constraints on **patent protection** continue to be detrimental to EU companies. The high level of formality and cost of filing as well as the examination requirements for patents are of a high concern. Restrictive patentability criteria combined with difficulties to enforce patents granted, as well as broad criteria for revoking patents, make effective patent protection difficult in India, notably for sectors where local production is being promoted. Even if some positive measures have been undertaken by the Indian Patent Office to improve registration efficiency, there is still a worryingly large patent backlog.

⁵⁷ IP India, *Annual Report* (various years).

<http://www.ipindia.nic.in/annual-reports-ipo.htm>

⁵⁸ <http://cipam.gov.in/>

As far as **trademarks** are concerned, EU stakeholders report a continued large backlog of older trademark applications and renewals while new applications appear to be prioritised and processed more quickly.

As regards **copyright** and related rights, the Department for Promotion of Industry and Internal Trade's (DIPP) Memorandum of September 2016⁵⁹ still gives rise to serious concerns as it seems to suggest that all online transmissions, including on-demand online services such as music streaming, should be considered as "broadcasting" and fall under India's statutory licensing system for broadcasting organisations pursuant to Section 31D of the Indian Copyright Act⁶⁰.

Another area of concern reported by right holders is related to the effectiveness of the system for protecting **undisclosed test and other data** generated to obtain marketing approvals for pharmaceutical products.

Similar concerns are reported with regard to **trade secrets**. Due to the lack of a statute that would specifically address the protection of trade secrets, parties have to rely on contract clauses of non-disclosure to safeguard trade secrets. India recognises the common law, which allows court proceedings against disclosure of trade secrets based on breaches of confidence and contractual obligations.

IPR enforcement remains a source of serious concern. While EU stakeholders report that cooperation with customs authorities has improved, IPR infringements are still widespread due to the lack of enforcement capacities, appropriate training and dissuasive sanctions. EU stakeholders report that civil enforcement remains lengthy and overly bureaucratic and that seizures and the identification of counterfeit goods are not efficient, particularly outside of Delhi.

As regards **customs enforcement**, EU companies report that customs procedures lack transparency and are overly bureaucratic. The lack of prescribed timelines for adjudicating customs seizures has led to long delays in the destruction of seized goods. India made a step backwards in June 2018 by removing patents from the scope of its Intellectual Property Rights (Imported Goods) Enforcement Rules. Following this amendment, customs authorities have no power to detain goods suspected of infringing patents anymore. Stakeholders also report that right holders find it difficult and cumbersome to obtain reimbursement for storage and destruction costs and that customs authorities have no mechanism to identify recidivist importers.

According to the OECD-EUIPO study on *Illicit Trade - Trends in Trade in Counterfeit and Pirated Goods* (2019)⁶¹, India is the third largest source of counterfeit and pirated goods in the world (both in terms of its share in the world export of fakes and the value of fake exports) and has become the fifth most important source of counterfeit imports into the EU. According to the EUIPO's 2020 *Status Report on IPR infringement*⁶², India is the main producer of counterfeit goods after China. According to the OECD-EUIPO study on *Misuse of*

⁵⁹ https://dipp.gov.in/sites/default/files/OM_CopyrightAct_05September2016.pdf

⁶⁰ <https://www.wipo.int/edocs/lexdocs/laws/en/in/in107en.pdf>

⁶¹ See footnote 5

⁶² See footnote 7

*Containerized Maritime Shipping in the Global Trade of Counterfeits*⁶³, India is one of the top five producers of counterfeit perfumery and cosmetics, leather articles and handbags, clothing, toys and games traded in containerships.

The latest report on *Trade in Counterfeit Pharmaceutical Products* (2020)⁶⁴ concludes that India is one of the largest identified producers of counterfeit pharmaceuticals. The products are shipped worldwide, with a special focus on African economies, Europe and the United States. In relative terms, India is the origin of 53% of the total seized value of counterfeit pharmaceutical products and medicines worldwide in 2016.

India has not yet ratified the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

On 14 January 2021, the first **EU-India Dialogue** on IPR (including GIs) took place. The exchanges were fruitful and both parties agreed to follow-up on a number of substantive issues between this IP Dialogue and the next one.

The Commission has recently launched an **IPR SME Helpdesk** in India, with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in India through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings and web-based materials.

A Memorandum of Understanding was signed in April 2020 between the EUIPO and the Indian IP Office on bilateral cooperation.

Russia

Progress

A number of positive developments have been noted in Russia in the course of the reporting period. Russia amended its legislation⁶⁵ to allow for the protection of geographical indications of both local and foreign origin in addition to appellations of origin, which was already possible under the legislation. The amendment enables Russia to accede to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

Russia also amended its legislation to promote accession to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

Russia set up a unified register of pharmacologically active substances protected by a patent. The register has the potential to improve transparency as to the status of patented active substances and to reduce the number of patent infringements.

⁶³ See footnote 18

⁶⁴ See footnote 10

⁶⁵ Law No. 230-FZ published on 26 July 2019

https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS54_LEG_1.pdf

Russia has started to work on a new legislative proposal⁶⁶ against copyright piracy. The new legislative proposal would improve the responsiveness of Russian ISPs to notices submitted by local and foreign right holders to remove the pirated content. The legislative proposal would be built on a Memorandum of Understanding⁶⁷ on cooperation in intellectual property rights protection in the digital era that was signed in 2018 between the largest Russian ISPs and right holders.

Russian Federal Customs Service stepped up efforts against counterfeiting at the border and established new specialised units against counterfeit products.

Concerns and areas for improvement and action

Despite the creation of the register of pharmacologically active substances protected by a patent, several constraints on **patent protection** remain problematic for EU companies. Restrictive patentability criteria and patent enforcement make effective patent protection in Russia very difficult, notably for pharmaceuticals. Stakeholders report that follow-on inventions (patent applications concerning new indications, methods of treatment, combinations, pharmaceutical forms and manufacturing methods of a known active ingredient) are excluded from patent protection by Order No 527⁶⁸ on the patenting of pharmaceutical compositions and their uses. This affects negatively the pharmaceutical sector by applying more restrictive patentability criteria than those applied in other sectors.

As regards **copyright**, stakeholders report that state-owned collective management organisations are unaccountable to right holders concerning the amount of royalties collected and distributed. Collective management organisations need to improve their transparency rules and allow right holders – both natural and legal persons – to be represented in their governing bodies.

As regards **regulatory data protection**, based on the law, Russia should ensure that for a period of six years from the first marketing authorisation of the pharmaceutical in Russia, the authority responsible for the granting of a marketing authorisation does not take into account the regulatory data provided in the first marketing authorisation application and subsequently submitted by another pharmaceutical company to place a medicinal product on the market without the explicit consent of the first pharmaceutical company which submitted such data. Stakeholders report that despite the provisions on regulatory data protection in the law, generic pharmaceuticals often obtain marketing authorisation during the regulatory data protection period without the explicit consent of the first pharmaceutical company which submitted such data.

⁶⁶ [Federal Law 155 of 27 June 2018 “On Amendments to the Code of Administrative Offences of the Russian Federation; http://publication.pravo.gov.ru/Document/View/0001201806270048?index=0&rangeSize=1](http://publication.pravo.gov.ru/Document/View/0001201806270048?index=0&rangeSize=1)

⁶⁷ Memorandum on the cooperation in the area of protection of exclusive rights. The Official version is not available online.

⁶⁸ Order No 527 of 1.10.2018, on Amendments to the Rules of Preparation, Submission and Consideration of Documents
<http://publication.pravo.gov.ru/Document/View/0001201812040020>

As far as **undisclosed know-how** and business information are concerned, stakeholders report a high volume of IP theft and misappropriation of trade secrets in Russia, notably in innovative sectors such as pharmaceuticals, engineering and telecommunication. The absence of effective measures, procedures and remedies for the protection of undisclosed information against its unlawful acquisition, use and disclosure remains detrimental for EU companies.

As regards the prevention of **parallel imports**, stakeholders continue reporting negative developments. In 2018, the Russian Constitutional Court ruled that judicial authorities are not allowed to apply the same sanctions against parallel imports as against counterfeit goods unless the parallel import causes harm similar to counterfeit goods. This interpretation causes serious legal uncertainty for right holders concerning the extent of their entitlement to prevent parallel imports.

Another negative development reported by stakeholders is the amendment of the Russian Civil Code⁶⁹ to authorise parallel imports for certain goods which are not available in the necessary quantity on the Russian market, or sold at excessive prices, or if their quality significantly differs from the quality of identical products circulating on foreign markets. This could facilitate the imports of counterfeit and low quality consumer products in Russia. Despite concern voiced by some EAEU Member States, the EAEU Commission recently reaffirmed its intention to amend the EAEU Treaty in order to allow the temporary application of the parallel import regime for certain types of goods at the EAEU level. This may not be in line with the provisions on exhaustion in the Enhanced Partnership and Cooperation Agreements the EU concluded with certain EAEU Member States.

As regards **plant varieties**, despite Russia's membership in the 1991 Act of the International Convention for the Protection of New Varieties of Plants, UPOV PRISMA⁷⁰ is not available for Russia, thus there is no possibility to file a plant variety protection application online. As a result, in 2019 and 2020, there has been a significant drop in the number of applications.

Despite recent reforms in the area of **civil enforcement**, EU stakeholders report that copyright infringements continue to be a serious problem, including, but not limited to, online piracy. A number of online pirate sites (e.g. cyber-lockers) are still hosted in Russia and the enforcement measures are neither efficient nor deterrent enough to tackle the problem.

As far as **patent infringements** are concerned, stakeholders continue reporting that preliminary injunctions remain difficult to obtain. Moreover, judicial proceedings are often delayed, preventing effective enforcement of patents. Furthermore, even if the patent holder is eventually successful, it is usually not possible to obtain sufficient compensation for the harm caused to the patent holder.

The EUROPOL-EUIPO study on *Intellectual Property Crime – Threat Assessment 2019*⁷¹ singles out Russia for its organised crime groups targeting primarily western European

⁶⁹ <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf>

⁷⁰ UPOV PRISMA is an online tool to assist in making plant variety protection applications to Plant Variety Protection Offices of participating UPOV members.

⁷¹ EUROPOL/EUIPO (2019), *Intellectual Property Crime – Threat Assessment 2019*

https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report.pdf

countries with a range of counterfeit medicines, primarily via the Internet. The OECD-EUIPO study on *Mapping the real routes of trade in fake goods* (2017)⁷² refers to Russia as one of the top sources of counterfeit foodstuff imported into the EU.

EU action

The Commission services closely monitor the developments in the area of intellectual property protection and enforcement in Russia and draw the Russian authorities' attention to matters of particular importance for the EU stakeholders, including in the context of the annual IP Conference organised by the EU Delegation in Moscow.

Turkey

Progress

A number of positive developments have been noted recently in Turkey. The Industrial Property Code⁷³, which was adopted in January 2017, brought positive developments in the course of the reporting period with respect to the protection of well-known trademarks and the invalidation of bad faith registrations. The Code has increased the level of alignment of certain provisions on GIs with the relevant EU legislation. Stakeholders report that the enforcement of well-known trademarks has become faster and more effective in the course of the reporting period. The Turkish Patent and Trademark Institute continued to expand the use of online applications and developed its call centre services, especially with regard to trademarks.

The more deterrent criminal sanctions and the increased number of seizures applied by the police and the customs authorities since 2018, brought about positive developments in the area of enforcement. Customs authorities have increased the number of seizures, in particular on the Turkish-Georgian and Turkish-Iraqi border, which is attributed by stakeholders to the trainings provided to customs officers with the involvement of trademark owners under the EU funded project. The establishment of specialised IP courts has strengthened the quality of IPR enforcement in Turkey by creating a framework in which consistent jurisprudence can be developed. Regrettably, despite the possibility to order higher sanctions, the criminal courts rarely order deterrent fines for commercial scale IP infringements.

The regulation on the Intellectual Property Academy⁷⁴ entered into force on 14 November 2019. The Academy is responsible for organising various meetings and trainings on intellectual property; conducting researches, internal coordination and cooperation activities as well as providing consultancy services for public and private sector employees in the field of IP.

⁷² See footnote 14

⁷³ Act N° 6769 on Industrial Property

⁷⁴ Presidential Decree No 4 of 15 July 2018 and the Regulation on the Intellectual Property Academy, Official Gazette of 14 November 2019.

Concerns and areas for improvement and action

Turkey introduced an international **exhaustion regime** with the Industrial Property Code in 2017⁷⁵. EU stakeholders continue reporting that, since Turkey is in a customs union with the EU, the application of a different exhaustion regime than that of the EU makes it difficult for right holders to control the exploitation of goods put on the market.

As far as **trademarks** are concerned, stakeholders continue reporting that revocation, opposition and invalidation procedures for trademarks are disproportionately expensive and overly long. Stakeholders also report that the trademark registration system is unpredictable and unclear. The lack of precise definition of bad faith applications renders the invalidation procedure concerning these applications ineffective.

As regards **copyright** and related rights, Turkey does not provide adequate legal protection against the circumvention of technological protection measures for authors, performers and phonogram producers, nor protection for right management information as required by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Stakeholders are also concerned about a possible amendment of the provision on the distribution right set out in the Copyright Law. There is a risk that import copies of literary works would not require the authorisation of the right holder.

While efforts to draft new laws have stalled, **piracy** issues continue to plague the Turkish marketplace, undermining economic opportunities for right holders. Stakeholders report that enforcement against online copyright piracy remains ineffective in Turkey. Digital piracy, via cyberlockers, bit-torrent and other peer to peer linking sites remains widespread. The European book publishing industry reports that physical piracy of books is also a serious problem in Turkey (e.g. pirated translations of books in English).

Stakeholders report long-standing problems concerning the governance and management of **collective management organisations**. Foreign right holders are not allowed to become full members and thus to exercise voting rights and to participate in the decision-making process of the collective management organisations. Stakeholders report that the rules on the distribution of royalties are not transparent and discriminatory towards foreign right holders.

Another area of continued concern reported by stakeholders is the absence of an effective system for protecting **undisclosed test and other data** generated to obtain marketing approval for pharmaceutical and agrochemical products. Despite the fact that Turkey has in place a regulatory data protection regime since 2005, stakeholders are concerned about its limited scope (biologics are excluded) and length (the six-year protection period starts running with the date of the first marketing authorisation in any country of the EU-Turkey Customs Union, thus potentially reducing the effective protection period in Turkey). Stakeholders continue raising also other shortcomings such as ineffective implementation and unreasonably slow procedures to process applications for a marketing authorisation.

According to the EUIPO-OECD study on *Why Do Countries Export Fakes?* (2018)⁷⁶, Turkey remains among the top three sources of counterfeit and pirated goods traded worldwide (both

⁷⁵ <https://wipolex.wipo.int/en/legislation/details/16609>

⁷⁶ See footnote 12

in terms of value and diversity of counterfeit goods). According to this study and the EUIPO-OECD study on *Mapping the Real Routes of Trade in Fake Goods* (2017)⁷⁷, Turkey exports mainly counterfeits in the following product categories: articles of leather and footwear, clothing, electronic and electrical equipment, foodstuff, optical, photographic and medical equipment, perfumery and cosmetics, watches and jewellery, toys and games. These are transported mainly by road to the EU. In terms of economy-specific patterns, the EUIPO-OECD study on the *Misuse of Small Parcels for Trade in Counterfeit Goods* (2018)⁷⁸ indicated that Turkey is among the top sources of small parcel trade. Also the Commission's report on *EU Customs Enforcement of IPR* (2019)⁷⁹ confirms the Turkey is one of the main source countries of counterfeit small parcels destined for the EU.

Stakeholders report that Turkey is a key **transit point** for labels, tags and packaging materials. The labels, tags and packaging materials are reportedly exported to the EU, separately from the goods and used for completing the infringement within the EU (e.g. by affixing the counterfeit labels and tags to the goods or by packaging them with the counterfeit packaging materials). The Industrial Property Code⁸⁰ seems to cause legal uncertainty for right holders, because the empowerment of customs authorities to detain and seize goods in transit is not laid down explicitly.

According to the Commission's report on *EU Customs Enforcement of IPR* (2019)⁸¹ by number of articles, Turkey is the 4th main source country of counterfeit goods detained at the EU border, which represents a share of 6,46% of all the counterfeit goods detained at the border. By value, this represents a 5,85% share and Turkey occupies the 3rd post after China and Hong Kong (China). Turkey is the main source country of counterfeit foodstuff and lighters destined for the EU. Turkey also exports high volume of counterfeit perfumes and cosmetics, clothing, clothing accessories, sport shoes, bags, jewellery, electronic game consoles, vehicles, including spare parts, office stationary and textiles. According to the OECD-EUIPO study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*⁸², Turkey is one of the top producers of counterfeit leather articles and handbags, traded in containerships.

As regards **criminal enforcement** procedures, the Turkish legislation provides a legal base to empower the police to take action for the *ex officio* confiscation of pirated and counterfeit goods where there is a public health, consumer safety or organised crime concern. However, customs authorities rarely issue an order *ex officio* to seize counterfeit goods, despite the indications that organised crime groups are involved in counterfeiting. EU stakeholders continue reporting that Turkish criminal judicial authorities, mainly the lower criminal courts rarely order the search and seizure of counterfeit goods and reject these requests without any justification. EU stakeholders report that public prosecutors and judges do not issue search and seizure warrants concerning counterfeit goods even if the right holder presents the reasonably available evidence to support their claims. Public prosecutors and judges require additional evidence, which is reportedly unreasonable to substantiate the claims of the right holder. Obtaining preliminary injunctions also remains difficult and the level of deterrence of the penalties ordered by judicial authorities is reportedly low.

⁷⁷ See footnote 14

⁷⁸ See footnote 16

⁷⁹ See footnote 20

⁸⁰ Law No. 6769 on Industrial Property of December 22, 2016.

⁸¹ See footnote 20

⁸² See footnote 18

Stakeholders continue reporting that Turkish **customs** authorities grant only three days for trademark proprietors to verify the counterfeit nature of detained goods, which is an unreasonably short deadline compared to the 10-days-deadline under EU law. Despite the increased efforts by the customs authorities with regards to new plant varieties, stakeholders report that the customs authorities lack sufficient resources and training to take efficient action against these IP infringements.

EU stakeholders also continue reporting that **enforcement authorities**, in particular the police and judges, lack sufficient resources and training to take efficient action against IP infringements. The number of IP courts has decreased over the past years in Turkey which reportedly has a negative effect on the quality and consistency of the court decisions.

EU action

The EU and Turkey continue to hold **IP working group** meetings. In this framework, the EU and Turkey exchange information on IP legislation and practices and identify shortcomings and proposals for improvement.

A TAIEX Seminar for lower criminal court judges for better enforcement of search and seizure warrants against counterfeit goods was organised in Antalya on 6-7 March 2020.

Ukraine

Progress

The EU-Ukraine Association Agreement entered into force in 2017, but its trade part was already provisionally applied since January 2016. A number of new laws were adopted in 2019 and 2020: on trademarks and designs (815/2020)⁸³, on patents (816/2020)⁸⁴, on GIs (123/2019)⁸⁵ and on IPR border measures (202/2019)⁸⁶. Ukraine is in the process of reforming its copyright regime too. The adoption of these laws, the ongoing copyright reform and the new cooperation activities with the EPO and the EUIPO bring Ukraine's IP regime closer to international standards and thus also to the EU law and practice.

Concerns and areas for improvement and action

In the area of **patents**, the new Patent Law⁸⁷ introduced restrictive patentability criteria denying protection for certain substances (salts, ethers, combinations, polymorphs, metabolites, etc.) and for new uses of known medicines, if the applicant does not provide evidence that the substance will guarantee enhanced efficacy. Such exclusions limit incentives to innovate in order to find more stable forms of compounds with longer shelf lives and dosages, which are safer or reduce side-effects. The law seems not to be in line with international standards and with the European Patent Convention.

⁸³ <https://zakon.rada.gov.ua/laws/show/815-20#Text>

⁸⁴ <https://zakon.rada.gov.ua/laws/show/816-20#Text>

⁸⁵ <https://zakon.rada.gov.ua/laws/show/123-20#Text>

⁸⁶ <https://zakon.rada.gov.ua/laws/show/202-20#Text>

⁸⁷ See footnote 84

In the area of **trademarks**, stakeholders report that there are some problems with the opposition procedure under the new trademark law⁸⁸, which render its application difficult. This is because the proprietors of registered trademarks are not informed about applications that conflict with their trademarks and are not given a clear deadline after the examination by the National IP Office to file an opposition against the conflicting applications.

As regards **copyright** and related rights, problems persist in terms of the definition of cable retransmission and tariff setting in the law on collective management organisations⁸⁹ adopted in 2018. The ongoing copyright reform could provide a solution for both issues. The implementation of the law on collective management organisations is reported by the creative industries to be slow. The authors' broadcasting and public performance rights are not managed effectively by any collective management organisation because the accreditation procedure has not been concluded.

EU stakeholders report that public broadcasting organisations continue not to pay royalties to performers and phonogram producers for the use of their performances and phonograms despite their legal obligation under the Ukrainian copyright law⁹⁰. The problem seems to be related to the weak enforcement of the copyright law.

As regards **plant varieties**, EU stakeholders have reported that the Ukrainian Plant Variety legislation⁹¹ features some shortcomings concerning the farm-saved seeds exception. Farmers can reuse seeds on their own landing without authorisation from the breeder, but are obliged to pay remuneration to the breeder⁹². According to the law, the Cabinet of Ministers should adopt an implementing regulation, which defines the exact amount to be paid and the mechanism for the collection. The lack of implementing rules seem to render the provision ineffective in practice.

Further progress remains necessary as regards **IPR enforcement**. According to the EUIPO-OECD study on *Trends in Trade in Counterfeit and Pirated Goods* (2019)⁹³, Ukraine continues to be one of the four main transit points for fake goods to the EU market. According to the EUIPO-OECD study on *Why do countries export fakes?* (2018)⁹⁴ and according to the EUIPO's 2020 Status Report on IPR infringement⁹⁵, Ukraine is a transit point for shipments of counterfeits into the EU especially in the following sectors: foodstuff; watches and jewellery; toys and games; clothing; optical, photographic and medical equipment.

The pharmaceutical industry raised concerns about the increasing level of counterfeit and falsified medicines, medical devices and medical supply and about the high volume of sales of counterfeit and falsified medicines in Ukraine through illicit online pharmacies. EU stakeholders report that **online piracy** remains a significant problem because the notice and take down procedure is too slow and burdensome and because blocking injunctions against intermediaries whose services are used by a third party to infringe an intellectual property

⁸⁸ See footnote 83

⁸⁹ The text is not public

⁹⁰ <https://zakon.rada.gov.ua/laws/show/3792-12>

⁹¹ <https://zakon.rada.gov.ua/laws/show/2986-14#Text>

⁹² Article 47(2) and (3) of Ukrainian Plant Variety law from 2002

⁹³ See footnote 5

⁹⁴ See footnote 12

⁹⁵ See footnote 7

right are not possible under the law, which is inconsistent with Ukraine's commitment under the Deep and Comprehensive Free Trade Area between the EU and Ukraine.

Concerning **customs** enforcement, two new orders were issued by the Ministry of Finance, which entered into force in June 2020. Stakeholders report that the two orders are not clear as to the procedures and consequently their IPR are not properly protected at the border. In Order 282⁹⁶ of 9 June 2020, the Ministry of Finance announced that a new software and information service would be provided for right holders with regard to the new Customs Register, together with an automated risk analysis system. Stakeholders have reported that this software and the automated risk analysis system are not yet fully operational. The lack of effective procedures for the destruction of seized counterfeit products and equipment used for their manufacture remains to be unsolved.

EU action

The **EU-Ukraine Association Agreement** requires Ukraine to reinforce its level of IP protection and enforcement. The Association Agreement requires a regulatory approximation of the Ukrainian IP law with the EU *acquis* in the area of copyright and related rights, trademarks, geographical indications, designs, topographies of semiconductors, patents, plant varieties and civil and border enforcement.

The **IPR Dialogue**, which has been set up by the Association Agreement, forms part of the broader cooperation between the EU and Ukraine in the context of the European Neighbourhood Policy⁹⁷ and enables both sides to exchange information on multilateral and bilateral IPR-related issues, on national IP legislation and practices and to identify shortcomings and proposals for improvement. Since the publication of the last report, one IPR Dialogue has taken place on 16 November 2020.

The Association Agreement also provides for annual meetings of the GIs Sub-Committee to discuss legislative developments and alignment, enforcement related issues and to take stock of the work carried out under the EU GIs technical assistance project⁹⁸. The most recent meeting of the Sub-Committee took place on 9 November 2020.

The European Patent Office started a cooperation with Ukraine on patents and a Memorandum of Understanding on trademarks and designs was signed between the National Intellectual Property Office and the EUIPO.

6.3. Priority 3

Argentina

Progress

Some progress can be noted in Argentina over the reporting period in the area of IP. The IP Office (INPI) started using electronic filing for patent, trademark and industrial design applications in October 2018, which simplifies and speeds up these processes. Stakeholders

⁹⁶ <https://zakon.rada.gov.ua/laws/show/z0548-20#Text>

⁹⁷ https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview_en

⁹⁸ A technical assistance project running from September 2017 to April 2021.

report improvements in the trademark registration procedure pursuant to the Regulatory Decree No. 242/2019⁹⁹. However, the positive impact of this instrument has not been assessed yet.

Concerns and areas for improvement and action

The level of IP protection and enforcement continues to be weak, which discourages investment in innovation and creativity.

Several constraints on **patent** protection remain detrimental to EU companies, and research and innovation more broadly. Stakeholders report that restrictive patentability criteria¹⁰⁰ and the patent examination backlog, estimated at 21 000 applications and reportedly due to insufficient specialised staff, make effective patent protection in Argentina very difficult, notably for pharmaceuticals, agro-chemicals and biotechnological innovations.

As regards **copyright** and related rights, Argentina reportedly does not provide adequate legal protection against the circumvention of technological protection measures for performers and phonogram producers as required in Article 18 of the WIPO Performances and Phonograms Treaty.

Another area of continued concern reported by stakeholders is the system for protecting **undisclosed test and other data** generated to obtain marketing approvals for pharmaceutical and agrochemical products. Stakeholders report that the Confidentiality Law¹⁰¹ provides some rules on confidentiality concerning data submitted for the market authorisation of pharma products, while allowing Argentinian authorities to rely on that data to approve requests by competitors to market similar products.

On **plant varieties**, stakeholders report that Argentinian law should still be revised in light of Argentina's commitments under UPOV 78, for example on the scope of the plant varieties rights, which does not extend to harvested material nor to products directly obtained from the harvested material, the lack of recognition of essentially derived varieties or the compulsory licensing of ornamental plants.

IPR enforcement remains a source of serious concern. IPR infringements are still widespread in Argentina due to the lack of enforcement capacities, appropriate training, dissuasive sanctions and the low number of seizures by customs authorities, in particular when acting on their own initiative. In terms of judicial action, stakeholders report lengthy and unpredictable proceedings, in particular for foreign plaintiffs, as well as difficulties in obtaining damages.

⁹⁹ Decreto Reglamentario 242/2019

<https://www.argentina.gob.ar/normativa/nacional/decreto-242-2019-321704/texto>

¹⁰⁰ Resolución Conjunta 118/2012, 546/2012 y 107/2012:

<https://www.argentina.gob.ar/normativa/nacional/resolución-118-2012-196991/texto> and Resolución 283/2015

<https://www.argentina.gob.ar/normativa/nacional/resolución-283-2015-252851/texto>

¹⁰¹ Ley de Confidencialidad sobre información y productos que estén legítimamente bajo control de una persona y se divulgue indebidamente de manera contraria a los usos comerciales honestos (Ley N° 24.766):

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/41094/norma.htm>

As regards **copyright piracy**, stakeholders report lack of awareness in the Argentinian society. Enforcement measures as regards copyright (audio-visual, e-books and music) are ineffective, with hardly any administrative or criminal actions in the course of the reporting period against the unlicensed music and audio-visual services that are widely available. Stakeholders report that third-party injunctions against intermediaries are not easily available. As to IP enforcement in general, there is a deficit of specialised judges or public prosecutor offices. Without the necessary expertise, court decisions lack consistency and preliminary injunctions are almost impossible to obtain. Sanctions and sentences actually imposed appear not to deter further infringements.

Argentina has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, the Patent Cooperation Treaty and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

The negotiations of the trade part of the Association Agreement between the EU and MERCOSUR reached political conclusion on 28 June 2019. The IP Chapter of the Association Agreement contains detailed rules on copyright, trademarks, designs, trade secrets, enforcement and border measures. Argentina committed to making best efforts to adhere to the Patent Cooperation Treaty and is encouraged to protect plant varieties in line with the standards in the 1991 Act of the International Convention for the Protection of New Varieties of Plants. The IP Sub-Committee set up in the framework of the Association Agreement will provide a regular forum for discussion on implementation and any issue related to IPR the Parties wish to raise.

The Association Agreement also contains a comprehensive article on cooperation in the field of IPR. The EU technical cooperation programme, **IP Key Latin America**¹⁰², which started in September 2017, will continue to be a useful instrument to enhance the protection and enforcement of IPR in Latin America, including Argentina. IP Key Latin America has provided a series of activities throughout the continent, including Argentina, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR and provide a more level playing field for IP stakeholders.

In addition, the **IPR SME Helpdesk** in Latin America continued over the last two years with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Argentina, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

¹⁰² <https://ipkey.eu/en/latin-america>

Brazil

Progress

Positive developments have been noted over the reporting period. The Brazilian IP Office (INPI) has maintained efforts to address the patent and trademark backlogs via accelerated and simpler procedures¹⁰³. INPI has reported that, following Brazil's accession to the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, it managed to reduce the deadlines to make decisions on trademark applications from 14 and 12 months for applications with and without opposition, respectively, in December 2018, to 9 and 6 months, respectively, in December 2019¹⁰⁴. INPI also reduced the backlog in trademark and patent examination in 2019 but had more difficulties to keep the same standards in 2020 for trademarks, where the number of applications was again higher than the number of decisions¹⁰⁵.

The National Council against Piracy and Intellectual Property Crimes (CNCP) facilitated promising public-private agreements to tackle online piracy through a Memorandum of Understanding to prevent advertisement placement in infringing sites and two guidelines on best practices: the Best Practices Guide for Internet Platforms; and the Guidelines for the implementation of anti-piracy measures by the Government, Right Holders, Payment Service Providers and Intermediaries.

Stakeholders have reported some improvements in copyright enforcement. For instance, the Federal Police and the Special Secretariat of Integrated Operations (Seopi) of the Ministry of Justice and Public Security launched operations that led to the blocking or suspension of infringing websites. Enforcement of other IPR, such as plant varieties, has also reportedly improved. EU stakeholders also report an increasing number of raids and seizures of counterfeit products, in particular in São Paulo or by the Federal Road Police.

The Brazilian government published in 2020 its “National Strategy of Intellectual Property” (ENPI). The stated purpose of this strategy is “to conceive an intellectual property system balanced and effective, widely used and that incentivizes creativity, investment and innovation and access to knowledge, with a purpose to increase competitiveness and the social and economic development of Brazil.”¹⁰⁶

¹⁰³ Use of prior art searches from other jurisdictions; normative instruction 70/2017 to expedite analysis of technology transfer and franchise agreements; normative instruction 232/2019 on industrial design guidelines.

¹⁰⁴ See Relatório de Atividades 2019, p. 6

https://www.gov.br/inpi/pt-br/central-de-conteudo/publicacoes/arquivos/relatorio-de-atividades-inpi_2019.pdf

¹⁰⁵ See Boletim Mensal de Propriedade Industrial, p. 16

https://www.gov.br/inpi/pt-br/central-de-conteudo/publicacoes/arquivos/boletim-mensal-de-propriedade-industrial_18-11-2020.pdf

¹⁰⁶ <https://www.gov.br/inpi/pt-br/central-de-conteudo/noticias/cerimonia-marca-50-anos-do-inpi-e-lancamento-da-estrategia-nacional-de-propriedade-intelectual/EstrategiaNacionaldePropriedadeIntelectual.pdf>

Concerns and areas for improvement and action

As regards **patents**, despite the efforts made by INPI to reduce the patent backlog¹⁰⁷ (estimated at over 100,000 applications pending), stakeholders report that it still takes about 10 years for a patent application to be examined (13 years for information technologies and pharmaceutical patents)¹⁰⁸.

As regards **trademarks**, some stakeholders keep reporting long delays and inconsistent practices in the trademark examination. For instance, stakeholders report the rejection of opposition to trademarks using misleading references to the geographical origin of the product. Others, however, acknowledge the improvements in the trademark examination backlog.

As far as **copyright** and related rights are concerned, no significant progress has been made over the reporting period. Stakeholders report problems to exercise individually their rights for online uses and lack of legal protection of technological protection measures.

Another area of continued concern reported by right holders is the system for protecting **undisclosed test and other data** generated to obtain marketing approvals for pharmaceutical products. Whereas Law No. 10603-2002¹⁰⁹ provides data exclusivity for pharmaceutical products for veterinary use, stakeholders report that for pharmaceutical products for human use they can only rely on the general unfair competition rules provided for in the Industrial Property Law¹¹⁰, which creates legal uncertainty.

IPR enforcement remains a source of serious concern. IPR infringements are still rampant in Brazil due to the lack of enforcement capacities, sufficient resources, appropriate training and dissuasive sanctions, in particular in criminal law. IP enforcement procedures, including both of the customs and the judiciary, are overly complex, not fully transparent or predictable and unreasonably long, especially at state level. Application of *ex officio* action by customs authorities is inconsistent, and there is a lack of trademark recordation system, which makes enforcement complex for right holders.

Brazil has not yet ratified or aligned its legislation with the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

¹⁰⁷ In June 2019, INPI announced a “Plan to Tackle Patent Backlog,” which aims to reduce the current backlog by 80 per cent within the next two years. The Plan also commits INPI to examine new patent applications within two years from the applicant’s examination request.

¹⁰⁸ A CNI (National Confederation of Industry in Brazil) Study from July 2018 estimates that the patent backlog will stand at 350,000 in 2029.

¹⁰⁹ <https://www.gov.br/agricultura/pt-br/assuntos/insumos-agropecuarios/insumos-agricolas/agrotoxicos/legislacao/arquivos-de-legislacao/lei-10603-2002-dispoe-sobre-a-protecao-de-informacao-nao-divulgada-submetida-para-aprovacao-para-comercializacao-de-produtos/view>

¹¹⁰ Article 195, item XIV of the Industrial Property Law N° 9.279, of May 14, 1996: http://www.planalto.gov.br/ccivil_03/leis/19279.htm

EU action

The negotiations of the trade part of the Association Agreement between the EU and MERCOSUR reached political conclusion on 28 June 2019. The IP Chapter of the Association Agreement contains detailed rules on copyright, trademarks, designs, trade secrets, enforcement and border measures. Brazil committed to making best efforts to adhere to the Patent Cooperation Treaty and is encouraged to protect plant varieties in line with the UPOV 1991 standards. The IP Sub-Committee that will be set up in the framework of the modernised Association Agreement will provide a regular forum for discussion on implementation and any issue related to IPR the Parties wish to raise.

The Association Agreement also contains a comprehensive article on cooperation in the field of IPR. The EU technical cooperation programme, **IP Key Latin America**¹¹¹, which started in September 2017, will continue to be a useful instrument in general to enhance the protection and enforcement of IPR in Latin America, including Brazil, and to assist with implementation of FTAs in particular. IP Key Latin America has provided a series of activities throughout the continent, including Brazil, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IP and provide a more level playing field for IP stakeholders.

In addition, the **IPR SME Helpdesk** in Latin America continued over the last two years with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Brazil, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

Ecuador

Progress

There has been only limited progress in Ecuador over the reporting period. Positive developments have been noted in music broadcasting, where competent authorities in Ecuador have intervened to ensure, in line with Ecuador's international obligations, that CNT, the public broadcasting organisation, does not use music without authorisation or without paying royalties to authors, performers and phonogram producers.

On 22 December 2020, Ecuador adopted the regulation No. SENESCYT-2020-077¹¹² implementing the Organic Code on Social Economy of Knowledge, Creativity, and Innovation (IP Code)¹¹³ as regards provisions on intellectual property, with a view to clarify and align Ecuador's legislation with international norms.

Positive elements were introduced in the implementing regulation concerning collective management organisations. Collective management organisations have got standing in civil and administrative proceedings and have been empowered to represent right holders in enforcement proceedings and to apply for enforcement measures, procedures and remedies.

¹¹¹ See footnote 102

¹¹² Acuerdo número SENESCYT-2020-077, de 22 de diciembre 2020

¹¹³ Organic Code of Social Economy of Knowledge, Creativity and Innovation, Official Journal Supplement No. 899 of 9 December 2016

The implementing regulation includes also other matters of relevance related to the management of the collective management organisations, which will require appropriate implementation by the competent authorities.

Concerns and areas for improvement and action

As regards **copyright** and related rights, the IP Code contains overly broad exceptions and limitations to the public performance and broadcasting rights, which seem to be inconsistent with Ecuador's international obligations and to its commitments under the EU-Colombia, Peru and Ecuador Trade Agreement.

Regarding the protection of **plant varieties**, the IP Code contains a number of provisions that raise concerns of legal certainty in its implementation. The implementing regulation has not addressed the substantive problems regarding the scope of the breeder's right as well as exceptions to it that appear inconsistent with Ecuador's international obligations as well as the Andean Decision¹¹⁴ (*Article 25 of Decision 345/1993 of the Andean Community*) regulating the matter.

More specifically, such provisions of the IP Code relate to an exception that allows for the exchange of propagating material between farmers and seem to violate Article 5(1) of 1978 Act of the International Convention for the Protection of New Varieties of Plants, to which Ecuador is a party.

IPR enforcement remains a source of serious concern. EU stakeholders report widespread availability of counterfeit and pirated goods across the country, including both online and in physical marketplaces. Despite the IP Office's broader responsibility and increased efforts against IP infringements, the enforcement regime remains weak.

Another area of continued concern reported by right holders is the absence of effective **customs** procedures for the detention and seizure of goods suspected of infringing an IPR at the border. EU stakeholders report that the main problem is that the IP Code provides only a limited scope of action for the customs authorities, which are not empowered to act *ex officio*.

Ecuador has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

In the context of the implementation of IPR commitments under the EU-Colombia, Peru and Ecuador **Trade Agreement** (Trade Agreement), the EU continues monitoring developments as to the effective implementation of Ecuador's obligations. The Trade Agreement requires Ecuador to raise the level of IP protection and enforcement. The EU has been urging Ecuador to address problematic issues in its IP Code, including via implementing regulations. In the IP Sub-Committee held in November 2020, in the context of exchange of information and best

¹¹⁴ Decisión 345/1993 de Régimen Común de Protección a los derechos de los Obtentores de Variedades Vegetales

<http://www.comunidadandina.org/StaticFiles/DocOf/DEC345.pdf>

practice, the European Commission presented the two industry-led initiatives implemented at EU level to fight against online IPR infringements: the MoU on the sale of counterfeit goods on the internet¹¹⁵ and the MoU on online advertising and IPR¹¹⁶.

The EU technical cooperation programme, **IP Key Latin America**¹¹⁷, which started in September 2017, will continue to be a useful instrument in general to enhance the protection and enforcement of IPR in Latin America, including Ecuador, and to assist with implementation of FTAs in particular. IP Key Latin America has provided a series of activities throughout the continent, including Ecuador, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IP and provide a more level playing field for IP stakeholders.

In addition, the **IPR SME Helpdesk** in Latin America continued over the last two years with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Ecuador, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

Indonesia

Progress

Some improvements can be noted in Indonesia over the reporting period. In October 2020, Indonesia adopted a new Omnibus Law on Job Creation¹¹⁸ that amended the local working requirement in Article 20 of the Law No. 3 of 2016 on Patents¹¹⁹. Indonesia's Ministry of Law and Human Rights issued new ministerial regulations on patent applications (No. 13/2021¹²⁰), which shortened the processing time of patent applications and on compulsory licensing (No. 14/2021¹²¹), which revoked the local working requirement. Hence, Indonesia's new local working requirement appears to comply with international standards and covers relevant activities such as the manufacture, importation and licensing of the patented invention in Indonesia. Indonesia has issued administrative orders to block over 3,000 copyright-infringing websites.

Indonesia is in the process of preparing a new draft law on industrial designs, which has the potential to substantially improve the protection of industrial designs in Indonesia. The new draft law on industrial designs (as submitted to the Indonesian Parliament) envisages the extension of the term of protection up to 15 years and introduces unregistered design protection for short life cycle goods.

¹¹⁵ https://ec.europa.eu/growth/industry/policy/intellectual-property/enforcement/memorandum-understanding-sale-counterfeit-goods-internet_en

¹¹⁶ See footnote 31

¹¹⁷ See footnote 102

¹¹⁸ <https://uu-ciptakerja.go.id/wp-content/uploads/2020/11/Salinan-UU-Nomor-11-Tahun-2020-tentang-Cipta-Kerja.pdf>

¹¹⁹ <https://bphn.jdih.go.id/common/dokumen/2016uu013.pdf>

¹²⁰ <https://peraturan.go.id/peraturan/view.html?id=3329ff6079ea5af4d3089018dee80157>

¹²¹ <https://peraturan.go.id/peraturan/view.html?id=d1fa37f93244c868a1781cc90c0012c1>

Indonesia has shown interest in becoming a UPOV member and is working with the UPOV Secretariat on the development of a compliant legislation on plant variety rights.

Concerns and areas for improvement and action

Restrictive patentability criteria make effective **patent protection** in Indonesia very difficult, notably for pharmaceuticals. Indonesia's Patent Law¹²² does not provide protection for new uses and applies an additional patentability criterion that requires 'increased meaningful benefit' for certain forms of innovation (e.g. salts and new dosage forms) as a precondition of patent protection. The 'increased meaningful benefit' criteria seems excluding from patentability inventions resulting in a compound having desirable and useful properties, for instance those that are cheaper to produce, easier to store, to transport or to administer, have a longer shelf life or cause fewer or less severe side effects.

As regards **trademarks**, EU stakeholders report that bad faith applications of foreign trademarks by local companies are registered and continue to be a problem with the consequence that right holders have to undertake expensive legal proceedings in courts to cancel them.

Another area of continued concern is the effectiveness of the system for protecting **undisclosed test and other data** generated to obtain marketing approval for pharmaceutical products.

As regards **plant varieties**, in terms of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants, one critical point in the Indonesian legislation might be found in the novelty criteria. Under Indonesian law, the prior commercialisation of the variety (harvested or propagating material) seems to include also acts done without the consent of the breeder. In addition, the current legislation does not grant protection to harvested material. EU stakeholders report that the high number of infringements of the plant breeders' rights is a barrier for highly innovative breeders to export their best technologies to Indonesia.

IPR enforcement remains a source of serious concern. Improvements of the law on civil proceedings continue to be necessary in order to ensure that competent judicial authorities may order the destruction or at least the definitive removal from the channels of commerce of goods that they have found to infringe IPR as well as the materials predominantly used for the manufacture of those goods. EU stakeholders continue reporting that Indonesia lags behind as regards trained and equipped officials to deal with online copyright infringements, in particular live streaming piracy. EU stakeholders from various sectors report that e-commerce platforms in Indonesia offer high volume of counterfeit goods and enforcement authorities lack sufficient resources and training to take efficient action against these IP infringements.

As far as **customs enforcement** is concerned, EU stakeholders report problems with the customs recordation system. Trademark right holders without a local office in Indonesia are not able to record their trademarks in the customs register. Stakeholders continue reporting also that the customs recordation system remains unavailable for copyright holders. The police continues to require copyright recordation with the IP Office as a precondition to

¹²² See footnote 119

conduct raids, which makes enforcement more complicated and less efficient. EU stakeholders from various sectors report that the customs procedure is overly slow and costly, because right holders are required to obtain a court order to detain a shipment suspected of infringing their IP right and to submit a bank guarantee to cover the customs' operational costs. Courts also require a bank guarantee based on the value of the shipment for the detention of a shipment.

According to the OECD-EUIPO joint study on *Why do countries export fakes?* (2018)¹²³, Indonesia was among the main producers of fake leather and footwear, foodstuff, watches and jewellery, toys and games. The updated OECD-EUIPO joint study on *Mapping the real routes of trade in fake goods* (2017)¹²⁴ also highlights that Indonesia is among the main producers of fake foodstuff, handbags and leather articles, jewellery, optical, photographic and medical equipment exported directly to the EU.

EU stakeholders from various sectors report that despite the many administrative orders to block copyright-infringing websites, **piracy** remains widespread in Indonesia, in particular in street markets, but also in the online environment. The problem of domain-hopping¹²⁵ remains unsolved as well as the unauthorised streaming of live events.

Indonesia has not yet ratified the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs or the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

Negotiations on an **EU-Indonesia free trade agreement** were launched in July 2016. Twelve rounds have been held so far. The objective is to conclude a comprehensive economic and partnership agreement with a robust IPR Chapter.

Under the **IP Key Southeast Asia** Programme,¹²⁶ which started in September 2017, a series of activities have been organised in Indonesia in the course of the reporting period, to improve and modernise the technical capacity of IP Offices, and to exchange best practices.

The **ASEAN Regional Integration Support** from the EU (ARISE Plus) programme¹²⁷ has continued with the aim of supporting greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus, the EU supports ASEAN countries, such as Indonesia, to participate in global protection systems, to develop regional platforms and to strengthen the network of ASEAN IP Offices. Activities include enhancing IP awareness in society and the IP capacity of the productive sector.

¹²³ See footnote 12

¹²⁴ See footnote 14

¹²⁵ Website blocking administrative orders do not cover mirror, derived and proxy sites, therefore, the content provided by the primary domain that is blocked often moved to other domain name extensions.

¹²⁶ <https://ipkey.eu/en/south-east-asia>

¹²⁷ https://eeas.europa.eu/delegations/indonesia/49555/arise-plus-indonesia-eu-commits-%E2%82%AC10-million-help-indonesia-grow-trade_en

Finally, the **ASEAN IPR SME Helpdesk**¹²⁸ has continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Indonesia, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

Malaysia

Progress

Positive developments have been noted in the area of IPR over the reporting period. Malaysia acceded to the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks in September 2019. At the same time, the programme called the Basket of Brands scheme, which allows trade mark owners to register their brands with the Ministry of Domestic Trade and Consumer Affairs, has been reported as increasingly used in the course of 2020. The Intellectual Property Corporation of Malaysia is drafting a new 5-year Strategy on IPR. A series of stakeholder consultations are planned as of February 2021.

EU stakeholders report a continued engagement by the Malaysian authorities' in raising IPR awareness and in taking enforcement action.

Concerns and areas for improvement and action

With respect to pharmaceutical and agrochemical products, there have been no changes as regards Malaysia's **regulatory data protection** system, which remains limited since the protection is not granted if a marketing authorisation is not applied for in Malaysia within eighteen months from the granting of the first marketing authorisation anywhere in the world.

IPR enforcement remains a source of serious concern despite the efforts of the Ministry of Domestic Trade and Consumer Affairs.

IPR-infringing goods continue to be widely accessible both on physical and online markets. Counterfeiting activities are typically concentrated in bigger states and cities. Demands for raid actions are higher in areas such as the Klang Valley (Kuala Lumpur, Selangor, Putrajaya), where due to the high number of complaints, it can be challenging to schedule and coordinate effective raid actions. Moreover, EU stakeholders note that burdensome requirements have to be fulfilled by right holders in order for customs authorities to take action. There also seems to be a lack of information concerning the penalties imposed on infringers and the destruction of seized counterfeits. According to the OECD-EUIPO study on *Illicit Trade - Trends in Trade in Counterfeit and Pirated Goods* (2019)¹²⁹, Malaysia remains among the top provenance economies for counterfeit and pirated goods traded worldwide and has moved up in the top 10 provenance economies of counterfeit imports into the EU. According to the OECD-EUIPO study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*¹³⁰, Malaysia is one of the top five producers of counterfeit perfumery and cosmetics, leather articles and handbags, clothing, electronics and electrical equipment, toys and games traded in containerships.

¹²⁸ <http://www.southeastasia-iprhelpdesk.eu/en/frontpage>

¹²⁹ See footnote 5

¹³⁰ See footnote 18

Malaysia has not yet ratified the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

A **Partnership and Cooperation Agreement** was concluded with Malaysia in 2016 but has not been signed. The negotiations of a Free Trade Agreement are currently on hold.

Under the **IP Key Southeast Asia** programme¹³¹, which started in September 2017, a series of activities were organised throughout the region, including Malaysia, to improve and modernise the technical capacity of IP Offices, to exchange best practices, contribute to achieving a high standard of protection and enforcement of IPR and provide a more level playing field for IP stakeholders.

Further technical assistance is granted to Malaysia under the **ASEAN Regional Integration Support from the EU** (ARISE Plus) programme¹³² which aims to support greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus¹³³ the EU continues to support the legal and regulatory IP frameworks to enable ASEAN countries like Malaysia to participate in global protection systems, to develop ASEAN regional platforms and to strengthen the network of ASEAN IP Offices with a view to improving their capacity to deliver timely and quality services. Activities aimed at private stakeholders include enhancing IP awareness in society and IP capacity of the productive sector. The specific objective of this component is to support ASEAN regional integration and further upgrade and improve the systems for IP creation, protection, utilisation, administration and enforcement in the ASEAN region.

In addition, the **IPR SME Helpdesk** in Southeast Asia continued over the last year with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Malaysia, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

Nigeria

Progress

There has been limited progress in Nigeria in the course of the reporting period. Nigeria has initiated the process of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants and has already an observer status. The draft legislative proposal on plant variety protection prepared by Nigeria, according to the UPOV Council is in conformity with the 1991 Act of the International Convention for the Protection of New Varieties of Plants and would allow Nigeria's accession.

¹³¹ See footnote 126

¹³² <http://ariseplus.asean.org/>

¹³³ <https://euiipoef.eu/en/ariseplusipr>

Concerns and areas for improvement and action

As regards **copyright** and related rights, Nigeria has not introduced a protection against the circumvention of technical protection measures and protection for rights management information as required by the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty to which Nigeria is a party. As far as collective rights management is concerned, the Nigerian system has serious shortcomings. Stakeholders continue reporting that the operating licence of COSON limited liability company, which is the collective management organisation managing the broadcasting and public performance rights of many international music right holders in Nigeria has not been reinstated by the Nigerian Copyright Commission. The situation makes the collection and distribution of royalties to right holders practically impossible.

The Nigerian Copyright Commission was expected to put forward a proposal for a new copyright legislation but by the end of 2020, consultations were still on-going. An early draft text raised concerns about the future legislation's conformity with international treaties and it remains to be seen whether these apparent shortcomings are addressed in the final proposal.

The draft law on copyright does not provide for blocking injunctions against intermediaries, including internet service providers, whose services are used by the infringer, which would render enforcement ineffective in the online environment.

IPR enforcement remains a source of serious concern. IPR infringements are widespread in Nigeria due to gaps in the legal framework on enforcement, the lack of enforcement capacities, appropriate training, dissuasive sanctions and the weak coordination between enforcement authorities.

EU stakeholders report that **online piracy** remains a significant problem and the weaknesses of the current law do not allow enforcement authorities to take effective actions against pirate sites. Nigeria remains the host to a number of unlicensed online music services and it appears there has been no enforcement action against them over the last year. Nigerian-based infringing services, especially cyberlockers, reportedly remain highly active internationally. The European book publishers report that local book publishers started to take advantage of the weaknesses of the enforcement regime in Nigeria and distribute books at commercial scale without the authorisation of the right holders.

Stakeholders continue reporting that weaknesses in enforcement mechanisms including the lack of adequate authority for **customs** authorities to seize and destroy counterfeit and pirated goods at the border continue to be a concern for right holders. The enforcement measures remain inefficient to tackle the high level of counterfeiting. Despite the right holders' continuous efforts, customs authorities do not order the destruction of counterfeit goods and it is reported that these goods often re-enter the market.

According to the EUIPO-OECD studies on *Why do countries export fakes?* (2018)¹³⁴, on the *Misuse of Small Parcels for Trade in Counterfeit Goods* (2018)¹³⁵ and on *Mapping the Real Routes of Trade in Fake Goods* (2017)¹³⁶, Nigeria was listed among the main transit points in

¹³⁴ See footnote 12

¹³⁵ See footnote 16

¹³⁶ See footnote 14

the global trade of counterfeit electronic equipment produced in China for re-export to other Western African economies. Widespread counterfeiting of alcohol and medicines also constitute a serious health risk in the country.

Nigeria has not yet ratified the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

The Commission services launched a Pan-African **technical cooperation programme** (the AfrIPI Project) in 2020 in order to support the preparation of an IP Protocol in the context of the negotiations on the African Continental Free Trade Area. Enforcement-related activities were also foreseen within this project with the objective of improving IPR enforcement in Nigeria.

Saudi Arabia

Progress

Some improvements can be noted in Saudi Arabia's IPR legislation despite longstanding challenges. The Ministry of Commerce and Investment recently established the Saudi Authority for Intellectual Property Rights as an initiative within the government's National Transformation Program 2020, which aims to harmonise the jurisdiction of IPRs under a single entity. Stakeholders report that the number of seizures has increased in the course of the reporting period and customs authorities are more cooperative with right holders than previously.

Concerns and areas for improvement and action

An area of continued concern reported by stakeholders is related to the inefficiency of the system for protecting **undisclosed test and other data**. Although Saudi Arabia's legal regime provides for protection of regulatory test data for five years following marketing approval of the product for which the data was submitted, since 2016 the Saudi Food and Drug Authority has repeatedly approved generic versions of innovative products before the expiry of the term of protection.

Stakeholders also report concerns about draft regulations for the protection of **confidential business information** which would grant regulatory data protection from the first authorisation globally rather than nationally.

IPR enforcement in Saudi Arabia features serious shortcomings. Stakeholders report that Saudi Arabia lacks effective protection and enforcement of IPR, and has permitted large-scale copyright piracy in its territory and beyond. Online piracy in particular poses a significant challenge, and stakeholders report high volume of pirated music and film content in Saudi

Arabia.¹³⁷ While the notorious Saudi-based, “beoutQ” TV channel, has stopped its operation in August 2019, IPTV apps downloaded onto “beoutQ” boxes continue to offer thousands of pirated films, TV shows and TV channels from Europe across the world.

Another area of continued concern reported by stakeholders is **customs enforcement** due to the lack of sufficient resources and capacity to handle the ever-growing number of counterfeit goods transiting or destined for the country, inconsistent and non-deterrent sanctions and the lack of *ex officio* actions by the customs. The destruction of counterfeit and pirated goods is reportedly very rare in Saudi Arabia. Stakeholders report that customs authorities do not have a centralised system to report detentions of counterfeit and pirated goods and that seized goods are often re-exported. One of the major challenges is the lack of transparency. Customs cases are transferred to public prosecutors or settled between customs and the importer. Brand owners have no standing in these proceedings and have no access to decisions on the seizures.

According to the EUIPO-OECD studies on *Mapping the Real Routes of Trade in Fake Goods* (2017)¹³⁸, on *Trends in Trade in Counterfeit and Pirated Goods* (2019)¹³⁹ and the study on *Why do countries export fakes?* (2018)¹⁴⁰, Saudi Arabia is a regional transit country for counterfeit goods destined to Africa and to the EU, especially in product categories such as foodstuff, perfumery and cosmetics, pharmaceuticals, watches, jewellery, toys, games and sport equipment.

Saudi Arabia has not yet ratified the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Madrid Agreement Concerning the International Registration of Marks, the Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

An **IPR cooperation programme** was launched in 2019 focusing on IP enforcement in the framework of the EU-Gulf Cooperation Council¹⁴¹. In parallel, and following the last report, the European Commission is in contact with the Saudi Authority for Intellectual Property (SAIP). SAIP is an independent entity that was established in 2018 from three separate government agencies that were previously responsible for copyright, patents, and trademark protection. SAIP is responsible for supporting the protection of intellectual property rights in Saudi Arabia and focuses on three main areas: awareness, enablement, and enforcement.

¹³⁷ GIPC 2020 IP Index, p. 211

https://www.theglobalipcenter.com/wpcontent/uploads/2020/02/023881_GIPC_IP_Index_2020_FullReport_A_04b.pdf

¹³⁸ See footnote 14

¹³⁹ See footnote 5

¹⁴⁰ See footnote 12

¹⁴¹ <https://ec.europa.eu/trade/policy/countries-and-regions/regions/gulf-region/>

Thailand

Progress

Positive developments have been noted in the area of IPR in Thailand in the course of the reporting period. The Thai government remains committed to strengthen IPR protection and enforcement and the Department of Intellectual Property (DIP) in particular is very engaged in improving IPR protection and enforcement, but these efforts are yet to bring significant improvements. Legislative processes in the areas of copyright and related rights, patents and industrial designs have been launched during previous years, but have not been concluded yet. The most recent accession to an international treaty in the area of IPR was the accession to the Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities in 2019.

Different authorities and agencies dealing with IPR enforcement continue to cooperate through the National Committee on Intellectual Property and the Subcommittee on Enforcement against IP infringements. The DIP in particular is very active in taking forward the IP policy in Thailand with a number of non-legislative actions. In 2020, the DIP prepared a Code of Conduct for Collective Management Organisations and organised awareness raising campaigns on this issue. In the area of trademarks, the DIP started a process of revising the guidelines of trademark examination which may facilitate uniform application of the rules in the future. The Thai authorities have been steering discussions between e-commerce and brand owners with the aim to reduce the availability of online counterfeit offers. Notably, the Thai authorities initiated and signed a Memorandum of Understanding on IPR Protection on the Internet between these interested circles, thereby paving the way for voluntary cooperation in this area.

Concerns and areas for improvement and action

EU stakeholders report that there are still significant challenges with the IPR protection and enforcement in Thailand.

As regards **patents**, EU stakeholders continue to report that the long-standing issue of the patent backlog remains unresolved, despite the increase of patent examiners and publication of the guidelines on patent examination. The duration of the patent examination lasts on average 10-12 years which cover a large part of the patent term provided in Thailand. It remains very important to continue the efforts to reduce the backlog. The process of amending the Patent Act has not been completed, despite being in preparation for a number of years.

As regards **copyright** and related rights, EU stakeholders report that the collective rights management system continues to lack transparency, accountability and good governance standards. Numerous collective management organisations with allegedly no mandate from right holders continue to be active, resulting in a general mistrust vis-à-vis collective management organisations in Thailand. It remains to be seen whether the Code of Conduct of the Collective Management Organisations will sufficiently address this situation. EU stakeholders also report the lack of adequate legal framework on the liability of the internet service providers and protection against the circumvention of technological protection measures and against the unauthorised alteration or removal of rights management information. This issue is at least in part addressed in the pending reform of the Copyright Act.

EU stakeholders report that **IPR enforcement** remains a serious concern due to the widespread availability of counterfeit and pirated goods.

As regards **online counterfeiting**, EU stakeholders report that the volume of online sales of counterfeit goods continues to increase. The Thai language e-commerce and social media platforms allegedly offer a wide variety of counterfeit goods and the cooperation between the platforms and the right holders is not efficient. Despite the adoption of the amendments to the Computer Crime Act which sought to improve the procedure for disabling access to pirate content online, EU stakeholders report that the procedure is not efficient, lengthy, complicated and costly.

As far as **border enforcement** is concerned, EU stakeholders report a lack of adequate and effective IPR border measures as a result of limited manpower, resources and, in some instances, corruption. In practice copyright infringements on the border are not addressed. The burden on the right holders to report incoming shipments and to participate in the verification procedures is significant.

As regards **civil and administrative enforcement**, EU stakeholders face difficulties in enforcing their rights because judicial and administrative proceedings are slow and inefficient. Even in cases where the law enforcement agencies are engaged and take action against counterfeit and piracy networks, the judicial proceedings are particularly complex. Penalties, including fines, in particular for repeat infringers, are low and do not have any deterrent effect.

According to the OECD-EUIPO study on *Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits*¹⁴², Thailand is one of the top producers of counterfeit leather articles and handbags, traded in containerships. Although in preparation for many years now, Thailand has not yet ratified the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

On an annual basis, the EU and Thailand hold **IP Dialogues** which allow both sides to exchange information on the state of IPR protection and enforcement. These exchanges between the relevant authorities are open and constructive and allow both sides to present the state of play, including ongoing legislative procedures, preparation of accessions to multilateral treaties and specific data on IPR enforcement activities.

Under the **IP Key Southeast Asia** Programme, which started in September 2017, a series of activities were organised throughout the region, including Thailand, to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IPR and to provide a more level playing field for IP stakeholders. Thai authorities are actively engaged in the various activities covering all types of IPRs both as hosts and participants.

¹⁴² See footnote 18

The **ASEAN Regional Integration Support** from the EU (ARISE Plus) programme has also continued with the aim to support greater economic integration in ASEAN countries inter alia by improving the systems for IP creation, protection, utilisation, administration and enforcement in the region. Under the IPR component of ARISE Plus, the EU continued supporting the legal and regulatory IP frameworks to enable ASEAN countries like Thailand to participate in global protection systems, to develop regional platforms and to strengthen the network of ASEAN IP Offices with a view to improving their capacity to deliver timely and quality services.

Finally, the **ASEAN IPR SME Helpdesk**¹⁴³ continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Thailand, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

7. MONITORING THE IMPLEMENTATION OF FREE TRADE AGREEMENTS

Canada

Progress

Canada is currently in the process of modernising its patent regime to implement the Patent Law Treaty¹⁴⁴. Relevant amendments to the Patent Act and the new Patent Rules came into force on 30 October 2019.

Concerns and areas for improvement and action

EU stakeholders have reported that the situation in the area of **copyright** has not improved. Stakeholders remain particularly concerned about the ambiguous fair dealing exception for educational purposes. EU stakeholders remain also concerned that Canada does not grant a remuneration right to phonogram producers and performers for a number of uses of their music in broadcasting and public performance.

EU stakeholders also continue reporting that Canada remains a host to websites providing access to pirated content. In cases where the identity of the operator of the pirate site is unknown, due to the use of services enabling anonymous registration of website domains, the problem seems to persist that right holders are not able to apply for an injunction against the intermediary aimed at preventing a continuation of a copyright infringement (e.g. website blocking).

Weaknesses in **enforcement** mechanisms including adequate authority for **customs** authorities to seize and destroy counterfeit and pirated goods at the border continue to be of concern for right holders. EU stakeholders report that customs authorities often lack resources to effectively tackle IPR infringements at the border. Police forces are reportedly rather passive in taking on criminal cases.

¹⁴³ <http://www.southeastasia-iprhelpdesk.eu/en/frontpage>

¹⁴⁴ <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr04653.html>

EU action

The **EU-Canada Comprehensive Economic and Partnership Agreement (CETA)** entered into force provisionally on 21 September 2017.

In October 2020, the **CETA Committee on GIs** discussed the implementation of CETA provisions related to the protection of GIs, particularly CETA commitments on administrative action, effective enforcement of GIs and the practical implementation of the grandfathering clause.

In February 2021, the **EU-Canada IPR Dialogue** took place. The discussion focussed on IPR developments since the last dialogue in June 2018.

Mexico

Progress

A number of positive developments have been noted in the course of the reporting period. Mexico adopted a new Federal Law of Protection of Industrial Property¹⁴⁵, which entered into force on 5 November 2020. The law updates and modernises the patent protection and provides for supplementary protection certificates in case of unreasonable delay in the patent registration process. The law increases to 15 years the term of protection of utility models. Following Mexico's accession to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs in 2020, the law also modernises the protection of industrial designs.

On trademarks, the law streamlines the examination procedure and reduces the requirements to recognise well-known trademarks. Furthermore, trademark licence registration is no longer mandatory. The law modernises the protection of trade secrets, approximating it to EU standards. Finally, the law provides for additional enforcement measures by strengthening the measures at the border and in the digital environment and increasing the penalties and administrative fines for intellectual property infringements. It also provides for new rules on the determination of damages, as well as tools for the conduct of proceedings by electronic means, including notification by electronic means if requested by the parties, which will make administrative procedures more efficient.

Mexico has also adopted amendments to the Copyright Law¹⁴⁶. It provides, among others, new rules on the legal protection of technological protection measures and rights management information.

Concerns and areas for improvement and action

As regards **copyright** and related rights, the list of rates established by the Federal Copyright Law has not yet been published and, hence, it is difficult to collect remuneration for reprography.

¹⁴⁵ Ley Federal de Protección a la Propiedad Industrial
http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPPI_010720.pdf

¹⁴⁶ Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Federal del Derecho de Autor
https://www.dof.gob.mx/nota_detalle.php?codigo=5596012&fecha=01/07/2020

IPR enforcement remains a source of serious concern for stakeholders, who report that it is not a priority for the competent authorities in Mexico, with lack of resources and insufficient staff training. Stakeholders report widespread counterfeiting and piracy across the country and a low efficiency level of customs authorities. The many markets where counterfeit products can be bought openly seem to be areas where the police almost never conduct raids or seize counterfeits. Stakeholders call for a national anti-piracy plan to adopt a strategy against major targets and to coordinate federal, state and municipal enforcement activities, which are today considered insufficient and focused only on goods, with limited action on online piracy or satellite and signal piracy.

Stakeholders report that **judicial and administrative proceedings** are costly, overly complex and lengthy despite the existence of a specialised IP court. The effectiveness of preliminary measures remains a concern for right holders. They report that obtaining preliminary injunctions is difficult and, where granted, they can be lifted if the alleged infringer files a counter-bond.

As regards **customs enforcement**, EU stakeholders find it extremely difficult and cumbersome to obtain reimbursement for storage and destruction costs, which are very high. Stakeholders report that short deadlines and high costs deter right holders from enforcing their rights on quantitatively small cases, including small consignments.

Customs authorities still do not have *ex officio* powers to seize goods and may only execute orders from the Attorney General's Office (AGO) or the Instituto Mexicano de Propiedad Intelectual (IMPI). This slows down the process considerably.

Mexico has not yet ratified or aligned its legislation with the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

EU action

The EU and Mexico completed negotiations for the modernisation of the EU-Mexico **Association Agreement** in 2018. When the Agreement enters into force, the EU and Mexico shall establish a Sub-Committee on Intellectual Property to hold annual bilateral discussions on IP, including GIs. In the meantime, the EU and Mexico continue discussing IP matters in the context of the Special Committee on Intellectual Property Matters established pursuant to the 2000 Economic Partnership, Political Coordination and Cooperation Agreement. The latest meeting of this Special Committee took place in October 2020.

The EU technical cooperation programme, **IP Key Latin America**¹⁴⁷, which started in September 2017, continues to be a useful instrument in general to enhance the protection and enforcement of IPR in Latin America, including Mexico, and to assist with implementation of FTAs in particular. IP Key Latin America has provided a series of activities throughout the continent to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IP and to provide a more level playing field for IP stakeholders. IP Key Latin America, in cooperation with IMPI, published in March 2021 a study on the economic contribution of IP-

¹⁴⁷ See footnote 102

intensive industries in Mexico¹⁴⁸ following broadly the methodology used by the EUIPO for similar studies in the EU.

In addition, the **IPR SME Helpdesk**¹⁴⁹ in Latin America continued over the last two years with the aim to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Mexico, through the provision of free information and services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

South Korea

Progress

The overall level of protection and enforcement of IPR in South Korea has further improved in the course of the reporting period. There have been successful efforts to combat counterfeit goods on street markets, notably in the Seoul area, and to curb online infringements.

As regards the online sale of counterfeits, under the active guidance of the Korean Intellectual Property Office (KIPO), large online platforms, have stepped up their efforts and their cooperation with South Korean authorities and EU stakeholders to clean up the online marketplace. While at this stage a MoU between right holders and platforms has not been concluded yet, in September 2019 KIPO and several South Korean online platform companies including Naver and Kakao, signed an MoU for the prevention of the distribution of counterfeit goods online.

The Ministry of Culture, Sport and Tourism (MCST) amended a Presidential Decree¹⁵⁰ with the aim of increasing the range of venues that will pay royalties for the communication to the public of copyright protected music. The decree¹⁵¹ has entered into force on 23 August 2018. However, this is only a partial and very limited solution for the problem of the lack of remuneration for public performance.

The Korean Institute of Intellectual Property (KIIP) study on the positive impact of intellectual property rights (IPRs) on the South Korean economy, titled *Analysis on Economic Contribution of IP-Intensive Industries*¹⁵² following broadly the methodology used by the EUIPO for similar studies shows the importance of intellectual property rights for South Korea.¹⁵³ Findings in the study show that IP-intensive industries added a total value of €436 billion to South Korea's GDP, accounting for 43.1% of South Korea's total GDP in 2015.

¹⁴⁸ https://ipkey.eu/sites/default/files/ipkey-docs/2021/IP-Key-LA_Impact-Study-Mexico-2020_Report.pdf

¹⁴⁹ <https://www.latinamerica-ipr-helpdesk.eu/>

¹⁵⁰ <http://www.law.go.kr/lsInfoP.do?lsiSeq=209755&efYd=20190702#0000;>

http://law.go.kr/LSW/eng/engLsSc.do?menuId=2§ion=lawNm&query=copyright&x=0&y=0#liBgcolor_12

¹⁵¹ The Ministry of Culture, Sports and Tourism has decided to revise Presidential Decree No. 27970 to expand the list of businesses which are not exempted by Article 29(2) of the Act. A draft was published on 2 May 2017 and the Cabinet Council of South Korea approved the revision of the Presidential Decree of Copyright Act on 16th August 2017, to slightly widen the positive list of venues where right holders can claim remuneration for public performance. On 23 August 2017, the Ministry of Culture, Sports and Tourism published the law, making it effective from the date of the publication.

¹⁵² https://www.kiip.re.kr/research_report/view.do?bd_gb=report&bd_cd=1&bd_item=0&po_item_gb=rgb_10&po_no=R0583

¹⁵³ https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf

Moreover, 6.07 million jobs in South Korea were generated by IPR-intensive industries, accounting for 29.1% of the entire South Korean employment. Furthermore, it was shown that IPR-intensive industries pay higher wages, with a wage premium of 51.1% compared to non-IPR intensive industries. Overall, the findings provide valid quantitative confirmation of the importance of IPRs in South Korea and will help increasing the profile of IPR protection in South Korea.

Concerns and areas for improvement and action

Concerns remain in respect of the **patent** filing system, in particular in the pharmaceutical sector, and in respect of the limited patent scope. EU stakeholders also have expressed concerns in the past in relation to the adequate protection of patent rights in the context of standard essential patents (SEPs).

As far as **copyright** and related rights are concerned, there has been only very limited progress on the problems related to the remuneration for the public performance of recorded music. The absence of the general right to remuneration for performers and phonogram producers and very low royalty rates for the limited entities listed in the Presidential Decree's positive list remain problematic. South Korea has not brought its law into compliance with international commitments.

As regards IPR **enforcement**, one of the remaining systemic deficiencies reported by stakeholders concerns the low level of sanctions which is considered insufficient to ensure adequate deterrence against IP infringements with regard to counterfeit and pirated goods.

According to the OECD-EUIPO study on *Mapping the Real Routes of Trade in Fake Goods* (2017)¹⁵⁴, South Korea is a source, albeit limited, of counterfeit electronics and electrical equipment.

EU action

The EU-Korea **Free Trade Agreement** entered into force in 2011. The annual **IPR Dialogue** and **Working Group on Geographical Indications** established by the FTA allow both sides to discuss ongoing legislative developments and to exchange experience on enforcement by customs and enforcement authorities as well as by administrative and judicial bodies. The last working groups took place in 2019 and 2020 respectively.

Vietnam

Progress

Positive developments have been noted in the course of the reporting period in Vietnam. In December 2019, the Market Control Board has taken small steps to tackle online counterfeiting by conducting raids against perceived locations used by online counterfeiters.

Vietnam has also stepped up its efforts in border enforcement. The General Customs office instructed all provincial customs offices to increase their checks for illicit goods, including

¹⁵⁴ See footnote 14

smuggled and counterfeit goods. In addition, a new Decree 98/2020/ND-CP¹⁵⁵ extended the definition of counterfeit goods which has been welcomed by right holders.

Vietnam acceded the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs on September 2019. The Geneva Act entered into force in Vietnam on December 30, 2019.

In January 2021, Vietnam released a new legislative proposal on IP. The new proposal includes provisions to further align Vietnam's regulations with its international commitments -including the EU-Vietnam Free Trade Agreement copyright and related rights, trademarks, industrial designs, plant varieties and geographical indications.

Concerns and areas for improvement and action

As far as **IPR protection** is concerned, EU stakeholders report an increase in **bad faith trademark applications**. They also note that, while improvements of Vietnam's IPR legal framework are necessary to bring it in line with international standards, their main concern remains the weak **IPR enforcement**. Procedures to bring IP infringement cases to court are lengthy and cumbersome and thus only few right holders use them. Administrative sanctions remain the main enforcement mechanism, but the amount of the fines is often too low to act as a deterrent.

According to the OECD-EUIPO study on *Illicit Trade - Trends in Trade in Counterfeit and Pirated Goods* (2019)¹⁵⁶, Vietnam remains an important producer of counterfeit goods in many sectors. The latest report on *EU Customs Enforcement of IPR*¹⁵⁷ showed that Vietnam is among the top 4 provenance countries for goods suspected of infringing IPR detained by EU customs authorities without release for free circulation. The report showed that Vietnam represented almost 25% of all jewelry and other accessories and more than 31% of all cigarettes detained in 2017. As regards cigarettes, this shows an increase of more than 22 percentage points compared to the figures in 2016.

EU stakeholders are also concerned about **widespread piracy**, in particular in the online environment. They note that there is no effective system for site blocking and that right holders face unreasonable evidentiary requirements to enforce their rights without being permitted to conduct investigations, notably in situations where enforcement authorities take insufficient action against illegal websites, camcording and live streaming piracy as well as against piracy devices and apps that facilitate access to infringing content. More generally, concerns have been raised that Vietnam's enforcement system has remained highly complex which makes it challenging for right holders to take effective and efficient action against IPR infringements.

Vietnam has not yet ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

¹⁵⁵ Decree No. 98/2020/ND-CP dated August 26, 2020 of the Government of Vietnam providing penalties on administrative violations in commercial activities, production of, trading in counterfeit or banned goods and protection of consumer rights

¹⁵⁶ See footnote 5

¹⁵⁷ See footnote 20

EU action

The EU-Vietnam **Free Trade Agreement** was signed on 30 June 2019 and entered into force on 1 August 2020. The FTA includes a comprehensive IPR chapter in which Vietnam has committed to a high level of protection, going beyond the standards of the TRIPS Agreement. With this agreement, EU innovations, artworks and brands will be better protected against being unlawfully copied, including through stronger enforcement provisions.

Under the **IP Key Southeast Asia Programme**¹⁵⁸, which started in September 2017, a series of activities were organised throughout the region, including Vietnam, to improve and modernise the technical capacity of IP Offices, to exchange best practices, to contribute to achieving a high standard of protection and enforcement of IP and to provide a more level playing field for IP stakeholders.

Further technical assistance is granted to Vietnam under the **ASEAN Regional Integration Support from the EU** (ARISE Plus) programme¹⁵⁹, which aims to support greater economic integration in ASEAN countries inter alia by improving IPR protection and enforcement. Under the IPR component of ARISE Plus,¹⁶⁰ the EU continues to support the legal and regulatory IP frameworks to enable ASEAN countries like Vietnam to participate in global protection systems, to develop ASEAN regional platforms and to strengthen the network of ASEAN IP Offices with a view to improving their capacity to deliver timely and quality services. Activities aimed at private stakeholders include enhancing IP awareness in society and IP capacity of the productive sector. The specific objective of this component is to support ASEAN regional integration and further upgrade and improve the systems for IP creation, protection, utilisation, administration and enforcement in the ASEAN region.

Finally, the **ASEAN IPR SME Helpdesk**¹⁶¹ continued to support the EU's small and medium sized enterprises in protecting and enforcing their IPR in the region, including Vietnam, through the provision of free information and other services. The rendered services include a free-of-charge helpline, trainings, and web-based materials.

¹⁵⁸ See footnote 126

¹⁵⁹ <http://ariseplus.asean.org/>

¹⁶⁰ <https://euiipoef.eu/en/ariseplusipr>

¹⁶¹ <http://www.southeastasia-iprhelpdesk.eu/en/frontpage>