Chapter 7

AN OVERVIEW OF GOVERNMENT AND INDUSTRY INITIATIVES

Governments and industry have been active in combating counterfeiting and piracy on a number of fronts, both independently and, equally importantly, with each other. In addition to efforts undertaken in a national context, governments have been working through multilateral institutions and on a bilateral and regional basis to address issues. Industry has also been active, nationally and internationally, both on a sectoral and cross-sectoral basis. This chapter provides an overview and assessment of the initiatives that have been taken, and Annex 7.A2 presents the situation in 15 different economies, in greater detail.

7.1. Intergovernmental initiatives

Intergovernmental initiatives have included the establishment of a comprehensive multilateral legal framework within the World Trade Organization (WTO), as well as co-operation in a number of specific fields (Table 1.1). On the enforcement front, for example, the World Intellectual Property Organization (WIPO), Interpol and the World Customs Organization have all developed specific programmes to improve enforcement of IPRs. In the area of health, the World Health Organization (WHO) is supporting specific initiatives to undermine the counterfeiting of medicines. Issues have also been addressed within the G8, and as part of a Global Congress that several multilateral institutions have organised with industry support.

7.1.1. Multilateral legal framework

As indicated above, the basic multilateral rules governing IPR are established in the WTO's TRIPS Agreement. The Agreement covers four broad issues:

- How basic principles of the trading system and other international intellectual property agreements should be applied.
- How adequate protection to intellectual property rights should be given.
- How countries should enforce those rights adequately in their own territories.
- How disputes on intellectual property between members of the WTO should be settled.

Table 7.1. Summary of intergovernmental IPR activities

Organisation	Principal activities related to counterfeiting and piracy
G8	Established experts group to examine ways to strengthen efforts to combat counterfeiting and piracy. Internet: www.fco.gov.uk/Files/kfile/PostG8_Gleneagles_CounterfeitingandPiracy.pdf en.g8russia.ru/docs/15.html
Global Congress	The Global Congresses on Combating Counterfeiting and Piracy bring together senior officials from government, international organisations and the private sector to enhance international co-ordination and co-operation and seek more effective solutions to combat counterfeiting and piracy. The Congress is organised by Interpol, WCO and WIPO, with the support of industry (GBLAAC, INTA, ICC and ISMA)*. Internet: www.ccapcongress.net
Interpol	Supports law enforcement agencies worldwide to combat IP crime through an IP Crime Programme. Established government/industry Intellectual Property Crime Action Group (IIPCAG) to advise and assist with initiatives. Internet: interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp
WCO	Provides training and technical support for governments to combat trade in counterfeit and pirated products. Works with governments and industry to address enforcement issues through information exchanges, and guidelines for effective enforcement. Established government/industry IPR Strategic Group to support initiatives. Internet: www.wcoipr.org
WHO	Engaged in building co-ordinated networks to combat counterfeit medicines around the globe. Established government/industry International Medical Products Anti-Counterfeiting Taskforce (IMPACT) to support efforts. Published guidelines for government measures to combat counterfeit medicines. Internet: www.who.int/medicines/services/counterfeit/en/index.html
WIPO	Oversees certain IP treaties and conventions containing enforcement provisions; provides technical enforcement support and training to governments. Established Advisory Committee on Enforcement (ACE) to support activities. Internet: www.wipo.int/enforcement/en
WTO	Oversees TRIPS agreement, which establishes a comprehensive multilateral legal framework governing IPR; agreement contains provisions for enforcement, consultation and dispute resolution. A TRIPS Council oversees operation of the agreement and government compliance. Internet: www.wto.org/english/tratop_e/TRIPS_e/TRIPS_e.htm

*Global Business Leaders Alliance Against Counterfeiting, International Trademark Association, International Chamber of Commerce (Business Action to Stop Counterfeiting and Piracy) and International Security Management Association.

With respect to enforcement, governments are generally obliged under the Agreement to ensure that intellectual property rights can be enforced under their laws, and that the penalties for infringement are sufficient to deter violations (WTO, 2006). Procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time limits or unwarranted delays. Parties involved should be able to ask a court to review an administrative decision or to appeal a lower court's ruling.

In addition to general obligations, the Agreement includes rules for obtaining evidence, provisional measures, injunctions, damages and other penalties (Box 7.1). It indicates courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. It indicates that wilful trademark counterfeiting or copyright piracy on a commercial scale should be subject to criminal prosecution and that border measures should be available to help prevent imports of counterfeit and pirated goods. Annex 1 elaborates further on the key provisions.

Box 7.1. Minimum standards set by TRIPS for IP enforcement

Civil proceedings: judicial instruments must be available to rights holders, such as injunctions, damages, evidence, right of information and provisional measures.

Criminal proceedings: members have to provide for criminal proceedings for commercial scale trademark and copyright infringement.

Border measures: measures to prevent the commercialisation of imported products that infringe trademarks and copyrights are required.

The TRIPS Agreement also contains provisions under which parties agree to consult with each other on matters relating to the agreement, including enforcement. Each member must supply information on the enforcement system (including laws and regulations, final judicial decisions and administrative rulings) in response to a written request from another member. These provisions have already been used by the United States, Switzerland and Japan in 2005 to inquire into the enforcement of IP rights in China. The Agreement also contains provisions for the adjudication of disputes.

7.1.2. Regional and bilateral agreements

In addition to the TRIPS Agreement, many regional and bilateral agreements contain provisions on IP; Annex 7.A1 provides further details on these agreements. In a substantial number of cases, the obligations contained in these agreements go beyond those contained in TRIPS, suggesting that there may be areas where the WTO disciplines could be strengthened (see below). These include expanding the scope of border measures, broadening the scope of civil and criminal remedies and expanding criminal provisions to cover a broader range of IP infringements. Further details on these, and other possible areas for strengthening the disciplines, are provided in Annex 7.1

7.2. National initiatives

Descriptions of the actions being taken to fight counterfeiting and piracy in a total of 15 OECD and non-OECD economies are contained in Annex 7.A2. The descriptions are based on information supplied by the respective economies and independent research carried out by the Secretariat[64]. A review of the situation suggests that in most of the areas examined economies have the mechanisms in place to adequately combat counterfeiting and piracy as their legal and regulatory framework are compliant with TRIPS. Civil procedures with remedies are available to rights holders, and there has been a general tendency to: *1)* increase damages available in case of IPR infringement; and *2)* to speed up the settling of cases. Many countries have also strengthened their criminal provisions by increasing prison terms and monetary fines. Enforcement, however, is still viewed by many as weak. A common criticism is that the resources devoted to IPR enforcement are insufficient and that those who engage in counterfeiting/piracy activities are not sufficiently penalised for their actions when they are caught.

64. It should be noted that the economy templates in Annex 7.A2 are brief overviews of the respective national IP protection regimes, but they have not been subject to review and comment by OECD members or other interested parties. These templates are not intended to be an assessment of the country's IP protection or enforcement systems or efforts to combat counterfeiting and piracy.

As resource challenges are likely to persist, governments may need to consider focusing enforcement activities on operations that will have the greatest impact. Disruption of counterfeiting/piracy activities at the points where infringement takes place is important: once items move into domestic or international trade, the chances for disrupting them are greatly reduced. As stopping infringing activities at the source is not always possible, efficient border enforcement procedures are also essential.

Raising awareness is an important aspect of combating counterfeiting and piracy and needs to be pursued vigorously. Consumers should be adequately informed about the growing threat that sub-standard counterfeit/pirated products pose to their health and safety, and consumers and counterfeiters/pirates should be aware about the legal consequences of infringing IPRs or knowingly purchasing infringing products. Raising awareness may also have beneficial effects on consumer attitudes and behaviour towards counterfeiting and piracy by making them more reluctant to purchase infringing products.

The section below presents a review of some of the measures taken by economies -- described in Annex 7.A2 -- to combat counterfeiting and piracy. The review was carried out using an analytical framework with eight key elements (see Box 7.2.), which could serve as a basis both for internal evaluation, as well as a point of departure for peer review.

7.2.1. Institutional organisation and co-ordination

A number of ministries and related government bodies are generally involved in administering and enforcing IPRs. Effective co-ordination appears to be the key to strengthening planning and enforcement. Most economies surveyed have promoted co-ordination, either by designating lead agencies, or by setting up special interagency working groups on IP protection. Japan, for example, has established a unit in the office of the Prime Minister to plan and oversee IP measures. France has created an inter-service working group that meets about three times a year to step up co-operation between administrations involved in the enforcement effort. Chinese Taipei has set up a task force for IP enforcement to review policies and improve communication. In China, a National Working Group on IP based at the Ministry of Commerce is responsible for the planning and co-ordination of IP protection. In some countries reviewed (Israel and Korea, for example), departments dealing with enforcement - mainly customs and police - have increased co-operation and intelligence-sharing through the exchange of databases.

7.2.2. Policy

A clear policy on IP enforcement that contains concrete objectives can provide the impetus needed to improve outcomes. Programmes in the countries reviewed have mainly aimed at strengthening legal and administrative structures and raising awareness. Since 2002, Japan has formulated an annual strategic programme for IP with identified priority areas. China's 2006 action plan summarises a range of initiatives in the areas of legislation, enforcement, training, education, international co-operation, awareness-raising and defines enforcement campaigns and crackdown operations.

Only some of the economies surveyed have established plans with detailed, measurable elements. In France for example, a 10-point government action plan adopted in 2004 has, amongst other things, set concrete enforcement targets for increasing seizures of counterfeit/pirated products at borders. In Brazil, work has been guided by a plan with 99 points for priority action.

7.2.3. Legal and regulatory framework

The legal and regulatory framework provides the parameters within which enforcement can be pursued. While the frameworks used by economies resemble each other in key respects, there are some differences. Under French criminal law, it is for example illegal to buy counterfeit goods, and the consumer of infringing products can be charged with a penalty. In the United Kingdom, a law allows the proceeds from IP crime to be recovered and used by enforcement agencies, thereby expanding the resources available to finance additional enforcement activities.

7.2.4. Enforcement

A good legal and regulatory framework is essential for combating counterfeiting and piracy, but it is not sufficient. Efforts devoted to combating counterfeiting and piracy on the ground are critical. Most of the economies surveyed have made enforcement a priority and have increased the resources devoted to it in recent years. In many countries, measures to address counterfeiting and piracy have been linked to efforts to fight organised crime.

Strengthening enforcement has involved organising well-publicised domestic enforcement operations aimed at disrupting counterfeiting/piracy activities. China, for example, organised a wide-ranging intensive enforcement campaign against criminal infringement of trademarks with raids of offices, warehouses and stores (*i.e*. the Mountain Eagle campaign). Brazil conducted several operations involving federal, state and municipal bodies at shopping centres and markets known for selling pirated products. The European Union launched two major joint customs multi-week operations to seize counterfeit goods in ports -- operation DAN in 2006 and operation FAKE in 2005.

Reinforced border measures are important to prevent the release of infringing goods into free circulation. A number of economies surveyed have adopted provisions allowing customs authorities, not only to check imports, but also infringing goods destined for exportation. This is for example the case in China, Korea and Chinese Taipei. Besides exports, European Union countries also control goods in transit and transhipment.

Governments have worked on strengthening the expertise of enforcement officials through the creation of specialised IP police/customs units and specialised IP courts. Korean customs, for example, have teams dealing especially with IPR enforcement. Chinese Taipei has an IP police, together with a unit specialised in identifying and dismantling optical disk operations that conduct illegal activities. Several economies, including Japan, China, the United Kingdom, Korea and Brazil have created specialised IP courts.

Many of the economies surveyed have also increased training. Chinese Taipei, for example has created a training academy for IP professionals, including judges, prosecutors, police officers or customs officials. Enforcement officials have been granted increasing powers in their enforcement activities: in a number of economies, police or customs can act upon their own initiative (*ex officio)* and are allowed to seize infringing goods without prior court order. The ease with which enforcement officials can act *ex officio* does, however, vary considerably among economies.

To increase the effectiveness of enforcement, economies like Korea and Chinese Taipei have set up reward mechanisms for informants and law enforcement personnel who have been active in seizing counterfeit products.

7.2.5. International co-operation

Counterfeiting and piracy is a global problem that needs to be addressed on a co-operative basis for best results. Most economies participate in international forums such as Interpol, WTO, WIPO and WCO. Some economies surveyed have also been active at the bilateral or regional level to exchange best practice and set common objectives in terms of IPR protection, or to provide training and engage in joint enforcement activities. France has created inter-ministerial bilateral committees with Italy and Russia to exchange best practice, set mutual annual targets and define common actions regarding IP protection. Brazil has been involved with Mercosur partners to strengthen IP protection through the adoption of a regional protection plan. In addition, it launched operation Jupiter-South America -- a cross-border police operation to target counterfeiting and piracy -- along with Paraguay and Argentina in 2004. In a joint 2004 summit, Japan, China and Korea agreed to increase dialogue and co-operation between patent offices. China, the European Union and the United States have established frameworks for regular consultation regarding IP issues.

7.2.6. Awareness

It is important for consumers, rights holders and government officials to: *1)* be aware of the counterfeiting and piracy problem; *2)* to understand what the effects are economy-wide, as well as on individual stakeholders; and *3)* to know what concerned parties can do to combat counterfeiting/piracy activities. A number of economies have developed far-reaching training and education programmes. In India, the government has set up an institute delivering training both to professionals and to the wider public. Chinese Taipei and the United Kingdom have introduced educational programmes on IP for schools.

Increasing awareness has also included the development of information through surveys. Japan, for example, has conducted detailed surveys to assess consumer awareness of counterfeiting and piracy and the adverse effects that the practices can have on rights holders. Finally, some economies have conducted media campaigns and prepared exhibitions to heighten awareness. Korea has organised an exhibition to help consumers distinguish counterfeit from genuine goods. France has launched annual wide-ranging media campaigns targeting consumers, using the press, radio and television, the Internet and information brochures. These awareness-raising efforts were operated in certain places: airports, beaches or during flights at times when consumers are most likely to buy infringing products. In some economies, governments have worked on publicising enforcement efforts. China has focused on coverage in the media. Brazil, for example, has organised the public destruction of seized goods.

7.2.7. Programme evaluation and measurement

To help monitor progress and respond to the changing nature of counterfeiting and piracy, policies and programmes need to be reviewed regularly. A number of governments have developed regular monitoring or reporting schemes and have published findings. These are important in helping to assess problem areas and evaluate progress. Economies such as Brazil, China, the United Kingdom and Korea, for example, prepare annual papers on IP protection and enforcement, while Chinese Taipei publishes quarterly reports and annual reviews.

Some economies, like Canada, have conducted special investigations -- Project Sham 2004 and Project Saffron 2000 -- to assess developments of IP crime. The United Kingdom had an independent review of its IP system conducted in 2006. The Gowers review examined the instruments of intellectual property (*i.e*. patents, copyright, designs and trademarks) to determine whether they provided incentives in an efficient manner; the final report provided recommendations on ways the system could be strengthened. In the United States, an independent review of customs enforcement was carried out by the Government Accountability Office (GAO) in 2007; a number of recommendations were made for improving border enforcement.

7.2.8. Industry and government co-operation

Industry has an important role to play in combating counterfeiting and piracy as it has the experience and knowledge to efficiently complement government action. Its involvement in the enforcement effort is essential since: *1)* rights holders have the technical expertise to distinguish counterfeits from original products; and *2)* industry may have additional information regarding the functioning of distribution channels. Industry is also an important partner in the awareness-raising task. Efforts towards stepping up co-operation are well underway in a number of the countries surveyed. In the customs area, for example, the European Union has recently set up a business-customs working group to rationalise the transmission of intelligence from rights holders to ports and airports. In the United Kingdom, an IP Intelligence system has been developed by the Intellectual Property Office, which collects intelligence gathered both by industry and enforcement agencies. In France, a national anti-counterfeiting committee (CNAC) has been set up to act as a forum for exchanges of ideas with the private sector; it has organised awareness-raising campaigns in collaboration with industry. In Switzerland, the Institute for Intellectual Property has initiated a public-private partnership with industry ("Stop Piracy") in 2005 to increase information exchange and organise awareness-building campaigns.

7.3. Industry initiatives

Industry is combating counterfeiting and piracy on many fronts. Their efforts include: *1)* collecting intelligence, conducting research and developing public awareness about C&P issues; *2)* pursuing IPR violators in courts; *3)* supporting government efforts to combat counterfeiting and piracy; and *4)* taking action to make it harder for pirates and counterfeiters to copy and market their products (*i.e.* through technology, etc.). Efforts are being pursued at the firm and sector levels, as well as across sectors. A number of cross-sector initiatives have an important international dimension (Table 7.2).

Box 7.2. Checklist for analysing policies and programmes to combat counterfeiting and piracy

1. Institutional organisation and co-ordination

Which government institutions are involved in addressing counterfeiting and piracy issues? Are their activities sufficiently co-ordinated? Could the institutional framework be further improved?

2. Policy

Has a clear policy to combat counterfeiting and piracy been developed? If so, what are the main provisions? Do policies have concrete elements against which progress can be measured?

3. Legal and regulatory framework

What are the main laws and regulations dealing with IPR and IPR infringement? Does the legal and regulatory framework meet TRIPS standards; does it go beyond? What punitive measures can be taken against counterfeiters and pirates? What is the deterrent value of these measures?

4. Enforcement

How is IPR enforcement carried out? What has been the nature and results of recent domestic enforcement initiatives/operations? Are the human and financial resources assigned to enforcement sufficient? Can enforcement agencies act *ex officio*? Could the speed and transparency of judicial and administrative actions be further improved? Are enforcement statistics compiled?

5. International co-operation

Apart from involvement in WCO, WIPO, WTO, WHO, G8 and Interpol activities, what initiatives have been taken to combat counterfeiting through international co-operation? Has there been a commitment to bilateral/regional initiatives or operations? Is information and expertise being sufficiently shared with other governments?

6. Awareness

What initiatives have been taken to promote awareness of the counterfeiting/piracy situation (public education campaigns, media campaigns, campaigns at schools and universities, surveys, training, etc.)? What have been the results?

7. Programme evaluation and measurement

What internal processes and procedures are in place for regularly reviewing policies and programmes to combat counterfeiting and piracy? Are reports/reviews prepared regularly? Could the evaluation process be improved? Is there sufficient data collection and evaluation?

8. Industry and government co-operation

What are the main initiatives where industry has co-operated with government to combat counterfeiting and piracy: in awareness-raising campaigns, in enforcement operations? Has the co-operation worked well, or can it be further improved? How can industry's role be enhanced?

Table 7.2. Examples of international/regional anti-counterfeiting associations/groups*

Organisation	Overview
AC-G (Anti-Counterfeiting Group)	Provides support and co-ordination with law-enforcement agencies and courts, and a national and international network of information, advice and contacts on anti-counterfeiting activities; maintains close links with Customs. Membership: 200 companies in 30 economies. Internet: www.a-cg.com
AIM (European Brands Association)	Liaises with European authorities and provides expert input at all levels of the legislative process; provides position papers and recommendations; works closely with customs. Membership: 1800 (through corporate members and national associations) in 21 economies. Internet: www.aim.be
BASCAP (ICC)	Unites the business community to more efficiently identify and address IP rights issues and bring these to the attention of authorities. It has created a number of practical tools to carry out its work, including those that provide for exchanging information on C & P issues in economies/sectors, brand protection techniques and intelligence reports. Membership: over 150 companies and trade associations. Internet: www.iccwbo.org/bascap
GACG (Global Anti-Counterfeiting Group)	Facilitates co-ordination among national and regional IP protection and enforcement organisations; provides education/information and promotes greater awareness of C & P issues. Promotes the formation of national anti-counterfeiting coalitions. Members: 20 organisations from Europe (including Russia and Ukraine), plus: China; Hong Kong, China; India; and United States. Internet: www.gacg.org/.
GBLAAC (Global Business Leaders Alliance Against Counterfeiting)	Promotes greater awareness of C & P issues and works with international law enforcement agencies and international government organisations; works closely with industry organisations and coalitions to improve information sharing, co-ordination and collaboration among industry groups. Will be merging with ICC/BASCAP in 2007. Membership: 13 multinational companies. Internet: www.gblaac.org/.
IACC (International Anti-Counterfeiting Coalition)	Provides anti-counterfeiting programmes and develops and conducts training for domestic and foreign law enforcement officials; works with governments worldwide and submits comments on intellectual property enforcement laws and regulations; participates in regional/international programmes aimed at improving IP enforcement standards. Membership: over 150 stakeholders [brand owners (76), law firms (39), etc.]. Internet: www.iacc.org/
INTA (International Trademark Association)	Promotes the rights of trademark owners; analyses and comments on treaties, laws, regulations, procedures and other enforcement mechanisms with respect to anti-counterfeiting. Engages and works with other anti-counterfeiting organisations and with government officials. Promotes public awareness through government roundtables, forums and publications on anti-counterfeiting. Membership: more than 5 000 trademark owners and professionals, from more than 190 countries. Internet: www.inta.org/
MARQUES (Association of European Trademark Owners)	Liaises with relevant EU and other international bodies in all matters relating to trademark protection. Provides a platform for networking and promotes the professional development of its members in the selection, management, protection and exploitation of their trademarks. Internet: www.marques.org/

*This table provides an overview of cross-sectoral associations involved in anti-counterfeiting activities. Information on sectoral associations can be found at: www.wipo.int/enforcement/en/co-operation.html.

The ICC's BASCAP is one of the more recent (early 2005) and comprehensive global initiatives launched by industry. It seeks to bring firms together to pursue a more unified approach to combating counterfeiting and piracy. Its efforts include the creation of platforms for exchanging information on the counterfeiting/piracy situation in different economies and sectors, and for sharing information on effective brand-protection techniques. It also seeks to provide stakeholders with improved information on the efforts being taken to address issues, with a view towards enhancing co-ordination. At the same time, research projects are being carried out to provide more effective methods for evaluating the counterfeiting/piracy situation in different economies. On the public policy front, efforts are being made to more effectively communicate the economic and social costs of counterfeiting and piracy to governments and the general public.

Important cross-sectoral initiatives to combat counterfeiting and piracy are also being taken by a number of national organisations, in addition to which many sectoral groups have specific activities devoted to fighting counterfeiting and piracy. The US Chamber of

Commerce, for example, launched a multi-million dollar global initiative in 2004 to combat counterfeiting and piracy (www.thetruecosts.org). Objectives include strengthening IPR legal regimes, providing technical assistance to enforcement and other government bodies, and carrying out research to improve understanding of the factors driving counterfeiting and piracy and the effects on economies. The initiative has a global dimension, with specific programmes in China, India, Brazil, Russia, and Korea. Another important initiative has been launched by industry in China. The Quality Brand Protection Committee (QBPC) of the China Association of Enterprises with Foreign Investment works in co-operation with the Chinese government to promote intellectual property protection. Its work has been directed to strengthening cross-border enforcement, facilitating international co-operation, and educational and research initiatives.

7.4. Authentication technologies

As indicated earlier in this report and in the sector assessments in Part III, it has become easier for counterfeiters and pirates to deceive consumers through high-quality packaging and/or through fake products that are virtually impossible to distinguish from authentic merchandise.

In the case of trademark infringement, brand owners are constantly looking for cost-effective ways to provide retailers and end-users with a means to determine whether the products they have purchased are authentic. In addition, if a rights owner wishes to take action against anyone infringing their intellectual property they need to be able to easily prove their case. The inclusion of authentication devices on genuine products offers strong supporting evidence to the court. Such authentication devices can also facilitate the work of enforcement agencies, such as customs and trading standards, during seizure processes. Although it is relatively easy to install an effective authentication system, the drawback is that the system requires continuous monitoring and updating to ensure that the selected solution is not compromised. In addition, brand owners need to be willing to support the effective use of the system through education and training of those who need to examine it in the field.

Technologies being employed to do so take two basic forms – those that are used to authenticate products, and those that are used to track and trace the movement of products through supply chains (Table 7.3) [65].

Examples of some of the overt technologies include holograms, embedded security threats, colour change inks and paper watermarks. Hidden features that can be included in overt devices include laser images, fluorescing inks, temperature-sensitive devices and polarising elements. Covert features include security inks, micro print and a variety of molecular and nano-scale marking technologies.

65. The analysis draws on information provided by Reconnaissance Internationale.

Table 7.3. Anti-counterfeiting technologies

Authentication technologies		Track and trace technologies	
Overt	Markings which are visible to an unaided human eye under standard viewing conditions.	**Barcodes**	Symbols printed on labels; can be combined with covert elements.
Hidden	Elements incorporated into overt features or packaging which are revealed to the human eye through the use of a handheld tool, such as a reactive pen, laser pointer, optical filter or UV light.	**Radio frequency identification**	Automatic identification method. Incorporated into a product for the purpose of identification using radio signals.
Covert	Not normally visible to the human eye; detection device required for viewing.		
Forensic	Require in-field assay kit or laboratory analysis, which can include analysis of the composition of the product as well as forensic analysis of the authentication marker.		

Radio frequency identification (RFID) is an emerging tracking technology. It facilitates automatic identification, relying on storing and remotely retrieving data using devices called RFID tags or transponders. In the United States, the Federal Drug Administration (FDA) has considered the use of RFID as a preferred solution to fighting counterfeiting in the pharmaceutical industry, but it has currently de-emphasised this technology due to cost, privacy and implementation issues.

The types of technology used vary according to the needs of individual industry sectors; many companies use a combination of overt and covert technologies. For example, the luxury goods industry uses, among others, RFIDs and embedded electro-magnetic identification tags in the goods themselves to track fake and stolen items. In addition to some pilot programmes using RFID, the pharmaceutical industry uses a wide range of authentication devices including holograms and colour-shifting ink labels on a large range of products. In the audio and visual sector, for example, edge to edge holograms are used on CD ROMs that feature a three-dimensional holographic image over the entire surface of the CD.

These anti-counterfeiting technologies are continuously subject to reverse engineering and brand owners are recommended to make minor changes to the designs they use at least annually to keep ahead of the counterfeiters. Suppliers of these technologies are well-aware of these threats and regularly update their offerings with new technology options.

While a range of these technologies has been introduced in the last several years, their broad use and success has been limited by a variety of factors, including costs and the ability of counterfeiters and pirates to adapt or copy the technologies.

References

Reconnaissance International Ltd. (2007), Discussions with Ian Lancaster, Managing Director (see http://reconnaissance-intl.com).

Annex 7.A1

THE INTERNATIONAL LEGAL FRAMEWORK FOR COMBATING COUNTERFEITING AND PIRACY

The scope of this annex

This annex presents an overview of the international legal instruments available to combat counterfeiting and piracy: it examines the texts adopted at the multilateral level, then those developed within regional frameworks, and finally, bilateral instruments. By building upon this review of the international discipline, the second part outlines the areas where it may be possible to strengthen the international framework against counterfeiting and piracy.

Not all IPR infringements amount to counterfeiting or piracy. For example, goods that under a licensing agreement have been manufactured or used under conditions other than those agreed upon with the rights holder are usually not considered counterfeited or pirated. Such infringements are not considered here.

In addition, although remedies may be identical for all types of infringements, some rules, such as Customs and border measures, have been specifically devised to combat commercial scale IPR infringements, in particular trademark counterfeiting and copyright piracy. Within the framework of IPR enforcement, this Annex looks particularly at these disciplines.

Specific definitions of counterfeit trademark goods and pirated copyright goods are contained in footnote 14 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"):

> *For the purpose of this Agreement:*
>
> *(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.*
>
> *(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.*

These definitions have been used in other international instruments. For example, several free trade agreements concluded by the United States contain the same wording.[66] Similar language is also used in the EC Council Regulation 1383/2003 of 22 July 2003 Concerning Customs Action Against Goods Suspected of Infringing Certain Intellectual Property Rights and the Measures to be Taken Against Goods Found to Have Infringed Such Rights (see article 2.1.a and b).

This Annex does not purport to provide an exhaustive review of every existing legal instrument relating to IPR enforcement, but rather strives to offer a general assessment of the discipline through a review of a representative selection of instruments, in particular those concluded by OECD countries and by the major world economies. It should be noted that while most of the instruments presented are legally binding, some are not.

Nor does this Annex examine whether or how the international discipline is applied or the level of compliance that OECD members and non-members have reached in the implementation of the existing multilateral, regional or bilateral rules.[67] This type of study would require a much more comprehensive set of data and would imply a detailed analysis of national legislation, jurisprudence and practice, which is outside the scope of the present work. The focus, instead, is on the assessment of the current international discipline, and how their limitations could be addressed through the strengthening of the international legal framework pertaining to IPR enforcement.

The international legal instruments for combating counterfeiting and piracy

Multilateral level

The WIPO Convention states as a primary objective the promotion of the protection of intellectual property throughout the world. This requires both the enactment of intellectual property legislation as well as the effective enforcement of rights. Treaties administered by WIPO contain some provisions on IP enforcement. The Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty (WCT), as well as the WIPO Performances and Phonograms Treaty (WPPT) include special enforcement provisions over issues covered in the respective treaties.

However, the WIPO treaties remain relatively vague on the issue of enforcement. None of these instruments provide for a comprehensive set of rules on IP enforcement. With the TRIPS Agreement, existing rules were collated and systematised and new multilateral minimum standards were established. Therefore, the TRIPS Agreement constitutes by far the most comprehensive discipline for combating counterfeiting and piracy at the multilateral level. Other instruments have a more specialised nature, although some of them, such as the Interpol resolutions, may play a significant role in promoting and facilitating international co-operation in combating large-scale IPR infringements.

66. See, for example, the US-Australia Free Trade Agreement (footnotes 17–26 and 17–27); the US-Central America and Dominican Republic FTA (footnote 18-15); US-Chile FTA (footnote 17-31); US-Morocco FTA (footnote 15-19).

67. For an appraisal of the implementation of the TRIPS, see C. Arup, "TRIPS: Across the Global Field of Intellectual Property", *European Intellectual Property Review*, 2004, 26(1), pp. 7–16.

The WTO TRIPS

Part III of the TRIPS Agreement (Articles 41 – 61) is devoted to the enforcement of intellectual property rights. The scope of this section is not to examine in detail these provisions, for which literature is abundant,[68] but to give an overview of the commitments made by WTO Members in the enforcement of IPRs.

According to Part III of TRIPS, WTO Members are required, *inter alia*, to introduce into their legal system a set of procedures for the enforcement of intellectual property rights. These procedures and remedies constitute a minimum standard of protection[69] which is made available to IPR right holders across the whole WTO membership, developed and developing countries alike. Least-developed country WTO members are, however, not required to apply TRIPS provisions in general until 1 July 2013[70], and are exempted from protecting and enforcing patent rights and undisclosed information with respect to pharmaceutical products until 1 January 2016[71]. In addition, the TRIPS provisions permit, but do not oblige, members to apply stricter enforcement procedures and remedies, provided that the TRIPS provisions, including safeguards against abuse, are respected (Article 1.1 TRIPS). Therefore, the actual level of IPR enforcement procedures and remedies depends on the national implementation and on the individual members' interest in adopting measures which go beyond TRIPS obligations.

The TRIPS enforcement provisions can be summarised as follows:

- WTO Members must establish, under their law, enforcement procedures for effective actions against IPR infringements. These procedures must be fair and equitable, timely, accessible and in accordance with the principles of due process (Article 41 and ff.). The TRIPS Agreement also requires that such procedures shall not create barriers to legitimate trade and shall provide for safeguards against their abuse. It is also understood that there is no obligation to put in place a distinct judicial system nor to redistribute resources between IPR enforcement and law enforcement in general.
- In civil and administrative procedures, the judicial authorities must be provided with the authority to order the following minimum judicial instruments:
  - *i)* Injunctions to prevent the commercialisation of IPR-infringing goods (article 44).
  - *ii)* Seizure and destruction of the infringing goods and of the disposal of the *instrumental celeris*, *i.e.* the equipment for the production of such goods, outside the channels of commerce (article 46).

68. See, for example, D. Gervais, *The TRIPS Agreement. Drafting History and Analysis (2nd edition)*, London 2003; D. Mattews, *Globalising Intellectual Property Rights. The TRIPS Agreement*, London and New York, 2002; T. Cottier, "The Agreement on Trade-Related Aspects of Intellectual Property Rights", in P. F. J. Macrory, A. E. Appleton, M. G. Plummer (eds.), *The World Trade Organization: Legal, Economic and Political Analysis*, Volume 1, New York, 2005, pp. 1102–1109. For an assessment of the first 10 years of the TRIPS, see F. M. Abbott, "Toward a New Era of Objective Assessment in the Field of TRIPS and Variable Geometry for the Preservation of Multilateralism", in *Journal of International Economic Law* 8(1), pp. 77–100.

69. Cottier defines these TRIPS provisions as "a body of common procedural standards in international law", see p. 1103, cit n. 1.

70. Decision of the Council for TRIPS of 29 November 2005, WTO Document IP/C/40.

71. Decision of the Council for TRIPS of 27 June 2002, WTO Document IP/C/25.

iii) Damages adequate to compensate at least for the injury provoked in case of wilful or careless infringement (article 45).

iv) Prompt and effective provisional measures to prevent IPR infringements, in particular to prevent infringing goods from entry into the channels of commerce, and to preserve evidence in regard to the alleged infringement. Where appropriate, it must be possible to adopt provisional measures *inaduita altera parte* (article 50).

- With regard to trademark counterfeiting and copyright piracy, WTO Members have to:

  i) Adopt border measures under which authorities, upon right holders' application, can suspend the commercialisation of counterfeit trademark goods and pirated copyright goods at the point of importation (article 51). The provision for such measures is only mandatory with regard to the importation of goods. The extension of these measures to infringing goods destined to be exported is optional. Goods in transit or transhipment, as well as small quantities of goods imported for non-commercial purpose, contained in travellers' personal luggage or sent in small consignments, are also not covered by the mandatory system of border measures. Other provisions specify the conditions for a right holder's application (article 52), procedural requirements (articles 53-57) and indicate the remedies that may be applied (article 59), including the destruction of the goods. TRIPS permits, but does not oblige, members to set up procedures for taking ex officio action, *i.e.* suspension of release into circulation of goods upon the initiative of the competent authorities and without any prior request by IPR holders, provided certain safeguards are met.

  ii) Provide in their laws for the application of criminal proceedings against wilful violations on a commercial scale. Remedies available must be serious enough to constitute a deterrent and the seizure and destruction of the infringing goods and of the instruments for their production must be available (article 61).

As the above summary shows, enforcement standards found in TRIPS operate on several levels. It can be generally said that the TRIPS sets out the main fundamental principles necessary for combating IPR infringements, sometimes in very general terms and sometimes in terms of more specific measures, but overall leaving a great deal of discretion to Members. National legislation is therefore inevitably more specific. Moreover, optional measures, which the WTO members may choose to implement in their legislation, are abundant in the TRIPS enforcement section, which shows that numerous potential "TRIPS-plus" provisions, *i.e.* enhancements over the TRIPS mandatory standards, could be established. Most notably:

- The reach of the mandatory border measures is limited to only cover certain IPR infringements and to only cover imports. The TRIPS expressly suggests as an option the extension of these measures to exports, but makes no such mention in regard to other border operations, such as transhipment. Expansion of mandatory border measures has the potential of considerably reducing the trade in IPR infringing goods.

- The mandatory criminal sanctions are restricted to cases of "wilful trademark counterfeiting or copyright piracy on a commercial scale." As the TRIPS itself suggests, there is room for applying criminal sanctions to infringements of other IPRs. Moreover, the TRIPS does not contain a definition "commercial scale".
- In addition to what is required by the TRIPS, there may be scope to consider making the availability of other remedies in civil and/or criminal procedures mandatory, such as, for example, seizure of assets, other than those covered by Articles 46 and 59, foreclosure of business, or suspension of professional license.
- There are principles which are mandatory, but where the Members have several options from which to choose in their implementation. This is notably the case in criminal penalties required to be adopted by Members with respect to trademark counterfeiting and copyright infringement, where the TRIPS language "[r]emedies available shall include imprisonment and/or monetary fines" (Art. 61) would allow the Members to choose from incarceration or monetary fines, or to decide to have both. Requiring that measures include both monetary fines and imprisonment, could potentially provide for a stronger deterrent. Mandating minimum fines and sentences would also ensure a more harmonised effect of such measures and potentially strengthen their deterrence value;
- The provision for *ex officio* actions by the authorities, whether in instituting criminal proceedings or border measures is optional, although the TRIPS does offer minimum standards should Members decide to provide for such measures. Mandating the availability of such measures could strengthen the enforcement system;
- While availability of provisional measures is mandatory, the determination of their scope is largely left to each Member;
- The right of information, whereby the authorities could order the infringer identity, for example, of third persons involved in the production and distribution, is optional under TRIPS.

This annex does not go as far as examining the national laws of WTO Members, but it can be imagined that implementation of the TRIPS in national legislation could potentially take different forms[72].

TRIPS contains other provisions which may be relevant to enforcement, including article 68, which creates the Council for TRIPS to monitor the Agreement, and article 69 on international co-operation. The latter provides:

> *Members agree to co-operate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and co-operation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.*

72. In response to a Checklist of Issues on Enforcement, prepared by the WTO Secretariat, some Members have provided concrete information on national enforcement laws and practices, see WTO Document IP/C/5 of 30 November 1995 for the checklist and WTO Documents IP/N/6/country code for responses.

For a better implementation of this article, the Council for TRIPS adopted a common procedure for the notification of contact points established under its provisions[73].

Disputes under the TRIPS can be adjudicated in accordance with the WTO dispute settlement mechanism. However, there have been only a few dispute settlement cases of relevance to enforcement so far. Three complaints have related to provisional measures as required under Article 50 TRIPS, and another one to obligations relating to criminal procedures in Article 61 TRIPS[74]. These complaints were the subject of amicable settlements. Two other cases reached the panel stage. They mainly concerned substantive rights, but also included claims relating to the availability of fair and equitable enforcement procedures, which were not upheld by the Panel[75] and the Appellate Body[76] respectively. There have been no complaints under the DSU relating to TRIPS enforcement provisions since the beginning of 2000. Hitherto, the DSU has not served to provide further guidance on the interpretation of TRIPS enforcement provisions. This does, however, not automatically imply full implementation by all WTO Members of their TRIPS obligations to combat counterfeiting and piracy.

The revision of the TRIPS rules on enforcement is not on the agenda of the Doha Development Round. However, some Members have indicated in the regular session of the TRIPS Council that they remain concerned about the increasing level of counterfeiting and piracy, notwithstanding implementation of the TRIPS Agreement. They have proposed a TRIPS Council work programme on this matter, for example to identify best practices, but without suggesting amendments to TRIPS rules. In three communications, the EC has referred to the need to assess the implementation of enforcement provisions by national authorities and to discuss solutions to the perceived deficiencies. It also raised the limited scope of border measures, which are only mandatory for the importation of counterfeit trademarks and pirated copyright goods; see WTO Documents IP/C/W/448, 468 and 471. A joint communication by the EC, the US, Switzerland and Japan has set out ideas for a TRIPS Council work programme on this matter, for example, to facilitate an exchange of information on experiences and best practices in this area and to engage in a constructive discussion of how to implement the TRIPS enforcement provisions more effectively; see WTO Document IP/C/W/485 of 2 November 2006.

A US submission has made available information on customs seizures and on modern border enforcement tools with a view to contributing to a constructive exchange of views and experiences among Members; see WTO Document IP/C/W/488 of 30 January 2007. Some other WTO members are not convinced that it would be appropriate for the TRIPS Council to take up this matter at a time when the Council had other important matters on its agenda on which work had not yet been completed. They have argued that the TRIPS Agreement leaves it to Members to determine the appropriate means of implementing enforcement measures and that there are other measures in the TRIPS Council and the WTO more generally for addressing any issues in this connection. Advocacy groups,

73. See WTO Document IP/N/3/Rev.9 plus addenda for the list of contact points notified by WTO Members.

74. WT/DS83 (*Denmark-Measures Affecting the Enforcement of IPRs*); WT/DS86 (*Sweden-Measures Affecting the Enforcement of IPRs*); WT/DS124 (*European Communities-Enforcement of IPRs for Motion Pictures and Television Programmes*); WT/DS125 (*Greece-Enforcement of IPRs for Motion Pictures and Television Programmes*); WT/DS196 (*Argentina-Certain Measures on the Protection of Patents and Test Data*).

75. WT/DS174/R and WT/DS290/R (European Communities Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs).

76. WT/DS176/AB/R of 2 January 2002 (United States-Section 211 Omnibus Appropriations Act of 1998).

governments and scholarly literature have indicated the provisions on border measures as the main area of improvement.

The World Customs Organization (WCO)

The main instrument developed within the WCO to combat counterfeiting and piracy is the Model Provisions for National Legislation to Implement Fair and Effective Border Measures Consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights. This non-binding instrument provides a model to follow when national legislations implementing border measures for the protection of IPRs are drafted or reviewed.

However, the WCO Model Provisions, which were developed first in 1995 and subsequently amended in different occasions until the last revision of 2004, go beyond the minimum standards of the TRIPS and recommend a more effective legislation to fight cross-border traffic in counterfeit and pirated goods. Their most salient and innovative elements vis-à-vis the TRIPS are that laws and regulations:

- Permit applications for enforcement actions to be submitted directly to the customs authorities that process the applications, without the need for a previous authorisation by the courts.[77]
- Permit a right holder to request customs to suspend clearance of goods infringing any type of IPRs, although with certain limitations with regard to geographical indications, and vis-à-vis any customs operation, including export or transit.
- Permit, and in certain cases require, customs powers to act *ex officio*. Under this provision, customs authorities would be obligated, on their own initiative, to suspend the clearance of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right has been infringed or is about to be infringed and may also suspend the clearance of goods which they have reasonable grounds to suspect of infringing an IPR.
- Restrict the *de minimis* derogation contained in TRIPS for digital piracy to a single copy of a work for personal use. This is an increasingly important area, given that the cumulative effect of shipments of pirated goods in travellers' luggage is considered by the WCO more and more a source of commercial harm to right holders.
- Define trade in counterfeit and pirated goods as a customs offence in accordance with the national laws.

The WCO, and particularly its "Strategic Group", which works with IPR holders on combating global counterfeiting from custom's perspective, developed a Standard Application Form for IPR holders to request border measures by customs authorities.

Other guidelines that were adopted within the WCO and which are relevant to the fight against counterfeiting and piracy include the *Guidelines on Controlling Free Zones in Relation to IPRs Infringements* and the *Guidance to Industry on Information to be Provided to Customs*.

77. The decisions by the customs remain subject to judicial review by administrative or civil courts.

WIPO

WIPO has announced as objectives assistance to WIPO Member States in strengthening their systems and infrastructure for effective IPR enforcement. Such measures include, *inter alia*, legal and technical assistance to Member States in relation to the development and establishment of effective IPR enforcement mechanisms and developing projects and information material for use in activities to enhance public awareness in fight against counterfeit, piracy and other IPR infringements.

Interpol

The Interpol General Assembly adopted the first resolution on intellectual property crimes in 1994 at its session in Rome (AGN/63/RES/13) and restated it in 2000 at its session in Rhodes (AGN/69/RES/6). While the impact of these documents, which have a non-binding nature, is limited, this organisation has carried out important operational activities in recent years.

Interpol has developed an IP Crime Programme and has established an Intellectual Property Crime Action Group. This group, which is composed of police and customs officials from Interpol member countries, international organisations and cross-industry representative bodies, develops initiatives and delivers solutions to stakeholders, member countries and industries affected by IP crime.

Interpol, in co-operation with the WCO, WIPO and the business community, organises a Global Congresses on Combating Counterfeiting and Piracy, the most recent of which was held in Lyon in November 2005. The Congress constitutes the largest gathering of agencies and private sector stakeholders working on counterfeiting and piracy. The Congress' final Declaration contains a set of critical elements for government and industry effective anti-counterfeiting/piracy strategies, about raising awareness, improving co-operation and co-ordination, building capacity and promoting better legislation and enforcement. In this latter field, the Congress recommended, *inter alia*, that "national governments empower competent authorities with the ability to examine export merchandise and to fully exercise that authority in taking appropriate action against counterfeit and pirated shipments."

Group of Eight

The Group of Eight (G8) has taken a number of steps to combat counterfeiting and piracy. The most significant commitments on enforcement have been taken at the Gleneagles Summit in July 2005, where the document *Reducing IPR Piracy and Counterfeiting through more Effective Enforcement* was adopted. In particular, the G8 leaders committed to:

> *promote and uphold laws, regulations and/or procedures to strengthen effective intellectual property enforcement, where appropriate, in areas such as the seizure and retention of suspected counterfeit or pirated goods, the destruction of such goods and the equipment used to produce them, and the use of clear, transparent and predictable judicial proceedings, policies and guidelines related to intellectual property enforcement.*

A similar declaration has been adopted at the St. Petersburg Summit in July 2006 (*Combating IPR Piracy and Counterfeiting*).

Within the G8, operates an IPR experts group which meets regularly to discuss co-operation on the fight against counterfeiting and piracy. In the 2006 Declaration, this group has been instructed "to study the possibilities of strengthening the international legal framework pertaining to IPR enforcement".

Regional level

European Union

The European Union's main instruments devoted to IPR enforcement are the Council Regulation 1383/2003 of 22 July 2003 Concerning Customs Action against Goods Suspected of Infringing Certain Intellectual Property Rights and the Measures to be Taken against Goods Found to Have Infringed such Rights ("Regulation") and the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights ("Directive"). A Directive on criminal enforcement is also under discussion. The EC Regulation, which is directly applicable in all Member States, is meant to improve customs actions primarily at the Community's external borders, while the EC Directive is intended to improve the protection and enforcement of intellectual property rights within the internal market. Directives, though binding as to the result to be achieved, necessitate the adoption by national authorities of measures to define the forms and methods of their implementation.

EC Regulation 1383/2003

The EC Regulation 1383/2003 defines the actions that are to be taken by the customs authorities with respect to goods which are suspected of or found to be infringing an IPR.[78] It replaces previous legislation, which was introduced already in 1986 and subsequently updated on different occasions.

The Regulation essentially addresses border measures, which under TRIPS minimum standards pertain solely to control of trademark counterfeit and copyright pirated goods. The Regulation is much broader in scope, applying in addition to goods which infringe certain other intellectual property rights, notably patents, design rights[79], designations of origin/geographical indications and plant variety rights. The measures also extend to any "mould or matrix" which is specifically designed or adapted for the manufacture of goods infringing an IPR.

Furthermore, customs controls and actions prescribed by the Regulation apply not only to goods imported for introduction into circulation in the Community territory, but also to goods which are exported or re-exported from the territory, transhipped through the territory, or which are stored in a free zone or warehouse. This goes much farther than the TRIPS, which only requires as compulsory measures for the control of imports.

The Regulation streamlines the process of application by the rights holders for customs actions with respect to infringing goods, in order to make them more predictable and easy to apply both by customs officials and rights holders. It prescribes the minimum mandatory information and supporting documents to be provided by the right holder which would enable the customs authorities to process the application, indicates the

78. K. Daele, "Regulation 1383/2003: A New Step in the Fight against Counterfeit and Pirated Goods at the Borders of the European Union", in *European Intellectual Property Review*, 2004, pp. 214-225.

79. Infringement of a design right is included in the definition of "pirated goods".

response times by the customs officials, and, with respect to community trademarks, provides that an application can be filed in one Member State for action in other States.[80]

The Regulation is quite detailed about the conditions and specific actions to be carried out once the application is accepted, including the notices to be provided, the duration of suspension/detention and conditions of release and the process of inspection and information exchanges with a view of determining whether the goods infringe an IPR. Finally, the Regulation lays down measures applicable to goods which are found to infringe IPRs, including for their destruction, and requiring Members to establish "effective, proportionate and dissuasive" penalties.

The Regulation also grants broader powers to customs authorities. In particular, customs authorities are expressly authorised to temporarily detain or suspend the release of suspected goods *ex officio*, when they have "sufficient grounds" for suspecting the goods of infringing an IPR. This permits the right holder, who may not be aware of the infringement, to be informed and to file an application with the customs authorities in due course. The Regulation also provides for a simplified process of destruction of the goods in question by the customs authorities, without a court order or even a formal determination of whether they infringe an IPR, on the request of the right holder and provided that the declarant/holder of the goods is duly informed and either consents or does not object within the prescribed period of time.

The Regulation contains several exclusions to its application. The first is the typical exclusion of goods which bear the trademark with the consent of the trademark holder or which have been manufactured with the consent of the holder of another IPR, but under conditions which are different from those agreed with the right holder or where the right holder has not authorised the transborder operation in question. In addition, the Regulation concentrates on infringement for commercial purposes, thus *a priori* excluding from its coverage infringing goods transported in personal baggage to the extent of the duty-free allowance granted by Community rules. However, small scale commercial trafficking is not excluded.

Directive 2004/48/EC

The purpose of the Directive 2004/48/EC is to ensure high and comparable level of protection for intellectual property in the Member States by reducing differences in the national legislation. The purpose is not to introduce a single regime, but by implementing the Directive's provisions, the national laws of the Member states are being harmonised. Nor does the Directive affect the substantive law on intellectual property or issues such as jurisdiction or recognition of decisions. The Directive thus provides for a series of legal and administrative measures, procedures and remedies to be implemented in the Member States in order to ensure the uniform enforcement of intellectual property rights[81]

80. The provisions for the implementation of this Regulation are laid down in Commission Regulation (EC) No 1891/2004 of 21 October 2004, which, *inter alia*, standardises the application forms to be used by the customs authorities throughout the Member States, including the instructions for completing the forms, specifies what information and supporting documents are to be provided based on the IPR right claimed and stipulates the points from which the various prescribed time periods begin to run.

81. The measures, procedures and remedies provided by the Directive apply widely to any infringement of intellectual property rights as provided for by Community law or by the national law of the Member concerned. The Commission has subsequently to the Directive issued a statement (2005/295/EC) of what it considers, as a minimum, to be rights covered by the scope of the Directive, listing *inter alia* copyright and related rights,

throughout the Community. The Directive concerns only the civil measures and remedies, leaving the question of criminal proceedings and sanctions outside its scope.

The Directive presents comprehensive procedures and specific conditions for obtaining information and evidence from the opposing party and preservation of evidence by provisional and precautionary measures, including interlocutory injunctions and seizures of the goods and the materials/instruments used in their production. Measures resulting from the decision on the merits of the case are also addressed in detail, including injunctions against the infringer and intermediaries as well as specific corrective measures, such as the recall of the infringing goods already on the market and the reparation of the prejudice suffered by the right holder, including the basis for the calculation of damages.

The above mentioned measures and procedures essentially correspond to the implementation of the minimum standards set by TRIPS, the specific procedures and conditions being defined in greater detail in the Directive. However, the Directive also goes farther than the TRIPS minimum requirements in several respects. Beyond the provisional measures required by TRIPS (Article 50) in order to prevent the infringement or to preserve evidence, the Directive requires that Member States provide for means to secure the recovery of damages, such as precautionary seizure of the movable and immovable property of the infringer, by blocking, including *inaudita altera parte*, the bank accounts and other assets, which can be necessary to prevent irreparable harm to be caused. The Directive also requires Members to ensure that the judicial authorities are able, at the request of the right holder, to order the infringer or others connected to the infringement to disclose information as to the origin and distribution networks of the infringing goods, this being optional under article 47 of the TRIPS. The Directive also introduces "publicity measures" intended to act as an additional deterrent and to improve public awareness, including as a minimum requiring the publication of the decision at the expense of the infringer.

A proposed Directive on criminal measures

As indicated, the Directive 2004/48/EC concerns only the civil and administrative measures and remedies which the Member States are required to make available to the rights holders, leaving the question of criminal proceedings and sanctions outside its scope. The Commission has however recently presented to the European Parliament and the Council a proposal for a Directive on Criminal Measures Aimed at Ensuring the Enforcement of Intellectual Property Rights[82], the objective of which is to align the Member States criminal law measures to more effectively combat IPR offences. The draft Directive lays down a range of penalties to be imposed for IPR infringements on both natural and legal persons intentionally committing or attempting to commit IPR infringements on a commercial scale, including those aiding or abetting and inciting such offences. In addition to setting the level of monetary fines and prison terms, the Directive provides, *inter alia*, for the temporary and permanent closure of the establishment used to commit the infringement, judicial winding up and bans on engaging in commercial activities, as well as for the confiscation of proceeds of the crime and other property belonging to the infringer. The Directive, which is still under discussion by the European institutions, also

trademark and trade names, designs, patents, geographical indications, utility models and *sui generis* rights of a data base maker.

82. European Commission, COM(2006) 168 Final, 26 March 2006.

provides for *ex officio* investigations and prosecutions by the authorities and requires that the rights holders be allowed to be involved in the investigation.

The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) preceded the TRIPS and contains a very similar set of provisions regarding intellectual property. NAFTA may provide some enhancements over the TRIPS in terms of substantive intellectual property protections and procedures, but this does not appear to be the case for the enforcement provisions.

In addition to the NAFTA, the United States, Canada and Mexico initiated a Security and Prosperity Partnership (SPP) in March 2005. One of the initiatives under this framework is called "Fake Free North America", under which the three countries have agreed to develop a strategy to enhance detection and deterrence of counterfeiting and piracy, expand public awareness and outreach efforts regarding trade in pirated and counterfeit goods, and develop measurements to assess progress over time and estimate the magnitude of the problem.

The Asia-Pacific Economic Co-operation

The Asia-Pacific Economic Co-operation (APEC) Trade Ministers issued a Joint Statement on the WTO/TRIPS Agreement Implementation at the Meeting in Darwin, Australia, in June 2000, confirming their commitment to the full implementation of TRIPS and to continuing technical co-operation. Recognising the need to improve public awareness, they also undertook to increase their co-operation within the region with respect to public education programmes concerning intellectual property. APEC members reaffirmed the importance they attach to the protection of intellectual property rights and the fight against counterfeiting and piracy at subsequent meetings. In particular, the APEC Anti-Counterfeiting and Piracy Initiative and the APEC Model Guidelines to Reduce Trade in Counterfeit and Pirated Goods and to Prevent the Sale of Counterfeit Goods over the Internet was adopted at the meeting of Trade Ministers in June 2005 and welcomed at the 13th APEC Economic Leader's Meeting in Busan, Korea, in November 2005.

The Association of South East Asian Nations

The Association of South East Asian Nations (ASEAN) Framework Agreement on Intellectual Property Co-operation, concluded in Bangkok on 15 December 1995, recognises the importance of promoting and protecting intellectual property in the advancement of trade and investment. The Agreement acknowledges and reaffirms the Member States' obligations assumed under international conventions, including the TRIPS. It goes further to indicate that any arrangements implemented within the framework of the Agreement, will be in line with the standards of those treaties and the TRIPS.[83]

83. It should be noted that Laos and Vietnam are ASEAN Members, but not yet members of the WTO.

This Agreement is forward looking rather than itself providing any obligations. Potential co-operative activities include cross border measures, networking of judicial authorities and intellectual property enforcement agencies, exchange of IP experts, the establishment of an ASEAN patent and trademark systems and Offices, as well as the creation of an ASEAN Intellectual Property Association and the provision of arbitration services or other alternative dispute resolution mechanisms for handling IPR disputes.

The European Free Trade Association

The Convention establishing the European Free Trade Association (EFTA), as amended in 2001, sets as one of its objectives "to provide appropriate protection of intellectual property rights, in accordance with the highest international standards" and contains a set of provisions covering substantive IP protections. On enforcement, it expressly refers to the TRIPS provisions.

Bilateral instruments

Without undertaking a complete analysis of the numerous existing bilateral agreements and other instruments, this paper presents a broad cross-section of instruments, in particular from OECD countries and the major world economies, and concentrates on their IPR enforcement provisions. While many of these instruments offer various enhancements over the existing international discipline, to the extent that these merely expand or extend substantive IPR protections and have little additional direct impact on enforcement, they will not be considered in any significant detail in this paper.

There are few existing bilateral agreements which deal specifically with intellectual property protection, and while IPRs are generally included as part of the investment assets contemplated by Bilateral Investment Treaties, the most noteworthy provisions dealing with IPR enforcement are contained in bilateral Free Trade Agreements or similar trade related instruments.

The Free Trade Agreements and Other Trade Agreements

The US Free Trade Agreements

The United States has concluded a series of Free Trade Agreements, notably with partners in the Americas and the Middle East regions,[84] in which generally the level of detail on IP issues emulates that of NAFTA. The Intellectual Property chapters of the US Free Trade Agreements[85] are quite explicit and could practically stand on their own as a comprehensive discipline in the matter[86].

84. Sometimes these go by a different title, *e.g.* "The Peru Trade Promotion Agreement", without differing in form or content.

85. The Agreements examined: US-Jordan (2000); US-Chile (2003); US-Australia (1994); US-Morocco (2004); US-Central America and Dominican Republic (2004); US-Oman (2006); and US-Peru (2006).

86. The Agreements also include a chapter on customs administration, which provides for co-operation and information exchange between the parties on customs matters generally and in particular cases where there is suspicion of unlawful activity.

Most of these Agreements are TRIPS Plus, *i.e.* they offer enhancements over the TRIPS discipline, in particular with respect to enforcement.[87] The main areas of strengthening of the TRIPS discipline are:

- *Civil proceedings.* The basis for the calculation of civil damages must include actual damages as well as the profits related to the infringing activity. Furthermore, the parties must provide for the possibility of statutory damages, which the right holder can choose instead of the calculated damages. Thereby, damages could be awarded even if the actual harm is not determined.
- *Criminal proceedings.* The parties are required to provide to the authorities the right to introduce criminal proceedings *ex officio*. Exportation of counterfeit and pirated goods is subject to criminal penalties to the same extent as their trafficking and distribution. In addition to infringing goods and equipment used in their manufacture, in criminal cases, the authorities may further seize and confiscate any revenues or assets traceable to the infringing activity. The available criminal penalties must include imprisonment and fines, as a minimum in case of wilful counterfeiting or piracy on a commercial scale. This notion specifically covers in some Agreements significant infringements carried out without seeking financial gain, applying therefore to significant end-user piracy. Some agreements require such penalties also in case of knowing trafficking in materials used in conjunction with the infringement, such as packaging or labels.
- *Disclosure of information.* Judicial authorities must be able to order the infringer to identify third parties involved in the infringement and disclose information about the production and distribution networks for the infringing goods and to provide the information to the rights holder, this requirement being optional under TRIPS. Furthermore, in case of refusal to provide such information, the judicial authorities can issue sanctions against the infringer and, in some cases, against their counsel and third parties.
- *Border measures.* Customs authorities must be able to initiate *ex officio* controls, and in many agreements, *ex officio* customs actions are not limited to imports. Such measures must also be available with respect to goods destined for exportation or that are in transit, when there is reason to suspect that the goods infringe an IPR. At the same time, rights holders applications for suspension of release are only required to be available for suspected imported counterfeit or pirated goods. The Agreements do not mandate access to customs procedures for rights holders for all types of transborder operations, as does, for example, the EC legislation in the matter.

Transparency and public awareness are important principles in these Agreements. They typically dedicate an entire chapter to transparency and more specifically require that the countries' laws dealing with intellectual property as well as their customs laws be published or otherwise made accessible to the public. They generally call for consultation with the other parties to the Agreements and other interested parties with respect to perspective laws in areas covered by the Agreements. The parties are also obligated to publish their decisions and rulings in IP infringement cases of general application. The Agreements go further in requiring the countries to publicise their efforts in IPR enforcement, including statistical data.

87. See, for example, Pedro Roffe, *Bilateral Agreements and a TRIPS-Plus World: The Chile-USA Free Trade Agreement*, 2004, available at www.qiap.ca.

The EU Agreements

The Euro-Mediterranean Agreements

A series of Association Agreements have been concluded by the European Union and its Member States with the economies of the Mediterranean region[88], known as the Euro-Mediterranean Agreements, the objectives of which are the development and enhancement of trade, economic, technical and other co-operation between the parties, with the establishment of a free-trade area as the ultimate goal.

These agreements are based on the same model. While the exact language differs[89], the Agreements commonly call for the parties to ensure protection of IPRs in accordance with the "highest international standards" and to provide effective means to enforce such rights. These stipulations in relation to IPR protection generally refer to an annex which lists the international treaties dealing with intellectual property to which the partner is required to become party, including in certain cases the TRIPS.[90] However, it is not quite evident what these "highest international standards" are. As various "TRIPS plus" provisions, notably those extending substantive protections, have emerged in European legislation and in a number of bilateral agreements containing IPR protection provisions, these "highest international standards" could eventually be interpreted as going beyond the requirements of TRIPS. In fact, some of the Agreements also contain provisions on "approximating" the parties' respective legislations, which conceivably exceeds the TRIPS minimum standards if the partner's legislation is to be aligned with that of the Community. However, it is less clear from this language whether these standards are contemplated primarily for substantive protection or to also encompass enforcement measures established by the EC.

A regular feature of these Agreements, in addition to the sections on customs co-operation, is an annexed Protocol on Administrative Assistance in Customs Matters, which evidently could also apply to assistance in combating counterfeiting and piracy, if these are considered customs offences. The assistance includes information exchange both on a regular and *ad hoc* basis, requests for surveillance and enquiries, notification and document delivery and testifying as experts or witnesses in proceedings concerning matters covered by the Protocol.

The "Cotonou Agreement"

The Partnership Agreement between the members of the Africa, Caribbean and Pacific Group of States and the European Community and its Member States, signed in Cotonou on 23 June 2002, contains certain basic provisions for the protection of intellectual property rights. The importance of adhering to TRIPS is emphasised and the parties recognise the need to "ensure an adequate and effective level of protection" of IPRs covered by TRIPS "in line with international standards". The language is not as strong as that found in the Association Agreements discussed above. The Cotonou Agreement also provides for the possibility of concluding more specific agreements

88. Tunisia (1995), Palestinian Authority (1997), Israel (2000), Egypt (2001), Jordan (2002), Morocco (2000), Algeria (2005), Lebanon (2006).

89. Certain Agreements call for "adequate and effective" and others for "suitable and effective" protection. Similarly, while the term "conformity" to the "highest international standards" is used, generally more nuanced terms such as "in accordance with" or "in line with" those standards are employed.

90. Algeria, Lebanon and the Palestinian Authority are not members of the WTO.

between the parties with respect to protection of trademarks and geographical indications for specific products.

EC - South Africa

The Agreement on Trade, Development and Co-operation between the European Community and its Member States and the Republic of South Africa, signed in Pretoria on 11 October 1999, provides that the parties "shall ensure adequate and effective protection of intellectual property rights in conformity with the highest international standards". The Agreement further indicates that the parties currently apply the TRIPS and "undertake to improve, where appropriate, the protection provided under" TRIPS. As do the Euro-Mediterranean Agreements, this Agreement lists a certain number of treaties in the area of intellectual property, but in this case it is a best endeavours clause rather an obligation to become a party to the treaties. The Agreement provides for possible technical assistance by the Community in preparation of laws and regulations dealing with IPR protection and enforcement and with the establishment of offices involved in IPR protection and enforcement, as well as personnel training in this area. The Agreement also provides for customs co-operation and includes a protocol on mutual assistance in customs matters on the same model as described above. The Agreement specifically calls for urgent consultations in case of problems in IPR protection affecting trade.

EC - Korea

The Framework Trade and Co-operation Agreement between the European Community and its Member States and Korea of 30 March 2001, provides that the parties shall conduct policy aimed at, *inter alia*, effectively protecting intellectual, industrial and commercial property. The parties confirm the importance they attach to the obligations contained in multilateral IPR conventions and to the rapid implementation of TRIPS in their legislation.

Other agreements

The Intellectual property provisions of other agreements concluded by the EC generally follow a similar approach in that they reiterate the importance of protection and enforcement of IPRs and, at least in the more recent agreements, the parties' commitment to conform to the "highest" international standards in this area[91]. The EC-Ukraine and the EC-Moldova Partnership and Co-operation Agreements (1994) call further for the partners to improve the protection of IPRs in order to provide for a "level of protection similar to that existing in the Community."

91. See, for example, the EC-Mexico Economic Partnership, Political Co-ordination and Co-operation Agreement (1997) and the EC-Chile Association Agreement (2002). On the other hand, the Agreement on Trade and Economic Co-operation between the EEC and the Republic of China (1985) does not mention IPR at all and the EC-India Agreement on Partnership and Development (1993) and the EC-Russian Federation Partnership and Co-operation Agreement (1994), while calling for protection and enforcemetn of IPRs, do not refer to such standards.

The Japan Economic Partnership Agreements

Japan has concluded Economic Partnership Agreements (EPAs) with Singapore (2002), Mexico (2004) and Malaysia (2005) which are, in principle, aimed at ensuring adequate and effective protection of IPR. The Singapore and Malaysia EPAs, and their implementing agreements, contain extensive IPR co-operation provisions. They establish a committee on IP to monitor and provide advice on the implementation of the IPR provisions and provide for consultation and exchange of information between competent authorities administrations about enforcement against goods suspected of infringing IPRs. The EPA with Malaysia is comprehensive, including more direct obligations on IPR protection and enforcement, such as protection of well-known trademarks, border measures, civil and criminal remedies, as well as provisions regarding transparency and promotion of public awareness concerning IPR protection.

The EFTA Agreements

On IP protection, EFTA follows a similar approach to that of its own Convention in the many agreements that it has concluded with third countries, at least the more recent ones.[92] A general statement as to the commitment to ensure "adequate, effective and non-discriminatory" protection of intellectual property rights in accordance with international standards[93] introduces more specific obligations. The parties reaffirm their obligations under the multilateral treaties to which they are all party and undertake to adhere to other treaties, in particular those to which all EFTA Members are party. Certain areas of substantive protection are specifically addressed, but as to enforcement, the parties agree to introduce "provisions under their national laws of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61." The Agreements provide for varying degrees of co-operation in the field of intellectual property, such as assistance in the implementation of laws in the IP area and forward looking statements as to supporting initiatives to establish future international conventions.

ASEAN-China

The ASEAN-People's Republic of China Framework Agreement on Comprehensive Economic Co-operation (2002) includes as one of the areas of negotiations towards the realisation of an ASEAN-China Free Trade Area, the "facilitation and promotion of effective and adequate protection of trade-related aspects of intellectual property rights based on existing WTO, WIPO and other relevant disciplines."

Bilateral IP instruments

Of the existing stand-alone bilateral IPR instruments, several are worth mentioning with respect to enforcement of IPRs.

92. The Agreements examined: EFTA-Mexico (2000), EFTA-Chile (2003), EFTA-Lebanon (2004), EFTA-Tunisia (2004), EFTA-Republic of Korea (2005).

93. Unlike the EFTA Convention and many EC bilateral Agreements, "highest" international standards are not usually mentioned in EFTA Agreements.

EU – US Action Strategy for the Enforcement of Intellectual Property Rights

At the EU-USA Summit held in Vienna on 21 June 2006, an Action Strategy for the Enforcement of Intellectual Property Rights was adopted. This Strategy, without being a formal agreement, commits the two parties to taking a string of measures on enforcement in the areas of customs and border control and to engage in joint efforts vis-à-vis third countries, particularly Russia and China. It also provides for co-operation in the efforts which are being undertaken in the different multilateral fora.

US-China

The Memorandum of Understanding (MOU) on the Protection of Intellectual Property between the United States and the People's Republic of China of 1992 contains a general obligation for each of the parties to provide effective procedures and remedies, internally and at their borders, to prevent, stop and deter IPR infringements. This MOU has been followed by an Enforcement Agreement, concluded by an exchange of letters dated 26 February 1995, to which a State Council Intellectual Property Enforcement Action Plan is annexed. This Enforcement Agreement is essentially a description by China of its IPR enforcement structure, the roles of the various national IPR protection and enforcement bodies, as well as a description of China's present and future enforcement efforts. These efforts include, *inter alia,* concentrating investigations into infringements of specific products (*e.g.* audiovisual products), intensifying customs controls on imports and exports, toughening the administrative sanctions, such as the revocation of business licenses, and increasing their application, application of a new customs law which makes IPR a customs offence and provides for *ex officio* actions. It also provides for assistance by the US Customs Service, Department of Justice and Patent and Trademark Office in China's efforts to improve IPR enforcement.

US-Paraguay

The Memorandum of Understanding on Intellectual Property Rights between the United States and Paraguay dated 30 March 2004 requires Paraguay to fully comply with its TRIPS obligations and provides for specific actions to be undertaken by Paraguay in order to "achieve actual, meaningful enforcement results." Such actions include, *inter alia*, reinforcing co-ordination between the various government entities involved in enforcement of IPR violations, encouraging and enabling prosecutors to file *ex officio* criminal cases, providing for the seizure of the infringer's assets, ensuring that prison sentences are imposed, in addition to fines, with respect to offences involving commercial quantities of counterfeit and pirated goods, training of additional prosecutors and judges and improving border measures through various concrete actions, such as establishing a special IPR customs unit, training customs officials, co-operating with rights holders and increasing *ex officio* actions. Paraguay must also assume the collection and publication of information and statistics related to all of the foregoing measures.

Bilateral investment treaties

The definition of "investment" in most bilateral investment treaties (BITs) encompasses intellectual property as one of the covered assets, either by generically referring to IPRs as a whole or by listing them. The BITs extend to IPRs the classical principles of national treatment, most-favoured-nation, fair and equitable treatment. They may also provide for rules on compulsory licensing and parallel imports. However, BITs do not contain rules

on IP enforcement and in this regard their most relevant aspect is their dispute settlement provisions and particularly the investor – State dispute settlement. A claim can be based on the failure of a host country to protect an intellectual property right, as any other covered asset. Such mechanisms may provide an additional venue to rights holders to ensure adequate IPR protection and enforcement.

Areas where international co-operation in the fight against counterfeiting and piracy could be further strengthened

A quite common view is that the international normative framework against counterfeiting and piracy is sufficient and that effectiveness depends exclusively on proper implementation of the existing rules. Indeed, improved implementation of the existing framework should have an effect on global piracy and counterfeiting. However, the present review highlights aspects that may contribute to tempering this widespread view. While the implementation difficulties certainly cannot be underestimated, this review shows that the international discipline is far from being adequately stringent or complete.

In recent years, the IP enforcement norms agreed at the regional and bilateral levels, developed on the basis of the TRIPS, have surpassed the TRIPS itself. These principles, some of which are still under discussion, could be scrutinised further to determine whether strengthening the multilateral discipline is warranted or desirable. Indeed, in some cases regional and bilateral rules make mandatory what in the TRIPS is just optional; in others, they provide for new solutions.

Additional measures that are being employed include:

- *Civil proceedings.* International rules could be improved in areas such as the seizure of goods and evidence, disclosure of information, and damage awards. For example, judicial authorities may be provided with a right, *inaudita altera parte*, to block the infringer's bank accounts and other assets, when necessary, to impair the infringing activity or to secure potential compensation for the rights holder. The authorities could also be granted powers to require the defendants to co-operate with the investigations carried out by the rights holders and by the authorities in order to further uncover the infringing activity; for example, requiring defendants to surrender business records to the court. With respect to damages, an element of profits related to the infringing activity could, for example, be added to the actual damage suffered. These measures are to some extent already contained in the EC Directive 2004/48 and in some US free-trade agreements (FTAs). These measures are of course binding for a limited number of parties and not necessarily for the more important players.
- *Border measures.* Experts consider border measures as one of the most effective mechanisms for stopping trade in counterfeit and pirated goods.[94] The first element in strengthening border measures could be to expand the scope of obligations to also cover exports, as well as goods in transit or transhipment. At the moment, article 51 of TRIPS provides for a mandatory system only with regard to the importation of goods, and there is no obligation to establish corresponding procedures against

94. See D. Gervais, "International Initiatives", in O Vrins, M Schneider (eds.), *Enforcement of Intellectual Property Rights through Border Measures, Law and Practice in the EU*, Oxford, 2006.

infringing goods destined for export. Moreover, goods in transit or transhipment are not covered by the mandatory system of border measures. Enabling customs administrations to control exports of products that infringe intellectual property rights would help to significantly reduce the trade flow at the source. Expanding the scope to include goods in transit would provide further opportunities to stem the flow of trade in infringing products. Such measures have also already been introduced in the WCO Model, US FTAs and EC instruments, such as EC Regulation 1383/2003.

- *Criminal proceedings.* In certain economies, criminal sanctions are extended to significant non-commercial piracy. In addition, *ex officio* investigations and prosecutions by authorities have been introduced, and the range of available remedies has been broadened, as in certain US FTAs and in the EC Directive currently under discussion.
- *Public information.* Public information may provide a significant element of effective deterrence, at both consumer and producer levels. Many of the regional and bilateral instruments reviewed contain some publication obligations for the parties, be they to publish the IPR protection and enforcement laws and regulations, enforcement statistics and/or the major judicial and administrative decisions against counterfeiting and piracy. The appropriateness of generalising such obligations should be evaluated.

Governments could consider the appropriateness of enhancing the existing international discipline, in particular by taking inspiration from, and building upon, the regional and bilateral rules. The EC rules and certain FTAs, particularly the most recent ones concluded by the United States, provide examples of an enforcement discipline that could be extended more widely. Other elements, especially in dispute settlement, could be taken up from investment law, and particularly from the experience of investor-State proceedings.

On the one hand, as seen above, the regional and bilateral agreements have been instrumental in ensuring a certain improvement and expansion of IPR enforcement provisions beyond the minimum standards of the TRIPS. Because, for the most part, they involve few partners, these instruments may, on an individual basis, be less challenging to put in place than a comprehensive multilateral instrument. On the other hand, as also demonstrated by this review, the dispersed bilateral/regional approach leads to diverse and uneven results.

In conclusion, continued study by national experts is needed to determine whether, and how, global IPR enforcement efforts could be enhanced by strengthening the international legal framework or the harmonisation of enforcement measures.

Annex 7.A2

ECONOMY TEMPLATES: OVERVIEW OF ANTI-COUNTERFEITING POLICIES

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BRAZIL

Institutional organisation	The National Industrial Institute (INPI), which is an autonomous federal agency under the Ministry of Development, Industry and Trade, oversees the implementation of laws and regulations pertaining to industrial property, which includes patents, trademarks, industrial design rights, geographical indications and computer programmes (WTO, 2004). (www.inpi.gov.br/)
Policy developments	In 2003, the Brazilian government stepped up its fight against counterfeiting and piracy, creating a Parliamentary Inquiry Committee on Piracy (CPI) to investigate piracy and tax evasion. A result of that investigation was the creation on 1 October 2004 of a National Council to Combat Piracy and Crimes against Intellectual property (CNCP), comprising representatives from both the public and private sectors. The Council's work is guided by a plan containing 99 guidelines for priority action. The guidelines have four principal aspects: enforcement, education, economic and institutional policies (WIPO, 2006).
Legal and regulatory framework	The 1996 Industrial Property Law provides for civil and/or criminal actions against trademark and patents infringements. Trademark and patent remedies for civil cases include recovery of damages, destruction of seized products, and judicial cost recovery. For trademark and patent law violation, imprisonment generally varies from three months to a year, but may be increased according to the infringement and the infringer (WTO, 2004). The 1998 Copyright Law establishes which acts are considered civil offences, while crimes are described in the Brazilian Criminal Code (WTO, 2004). Criminal penalties can vary from three months to four years imprisonment and/or a fine. In 2003, the Code was modified to increase the types of copyright infringement considered as felonies and inflict harsher penalties. For the main felonies, the minimum penalty is two years and the maximum four years: the possibility of suspension of the sentence is no longer available. In addition to imprisonment, infringing parties can be subject to a fine. In the case of software copyright infringements, pirated copies produced or commercialised could be subject to seizure and destruction and punishable with detention from six months to four years plus a fine [WTO, 2004].
Enforcement	The government has increased resources devoted to enforcement and efforts to publicise enforcement through the media. Together with the judicial structure, the National Council against Piracy has been working on the creation of specialised structures within the Federal and Highway Policy Forces for combating piracy. Additional resources were allocated in 2006 to enforcement bodies including the National Industrial Property Institute (INPI). Institutional reform has also occurred. The Brazilian Federal Court of Appeals for the Second Region, which covers the state of Rio de Janeiro and Espirito Santo, was reorganised in 2005 to include two panels specialising in IP matters. The court has Brazil's Institute of Industrial Property within its jurisdiction. With regard to border measures, customs authorities are able to seize trademark-infringing products on an *ex officio* basis, as well as on the request of an interested party; the principle has, however, been extended in practice to cover other types of IP infringements (Gorini and Werner, 2004). Under current practice, Customs may retain seized items for a period of 90 days, within which the rights holder must follow up. Once confirmed, illegally marked goods can be destroyed or otherwise disposed of (EC, 2006). The CNCP website (www.mj.gov.br/combatepirataria/) provides a direct channel of communication for enforcement and consumer protection bodies to file complaints and transmit information on piracy cases and new methods of counterfeiting. It is also possible to file complaints about corruption in actions dealing with crimes against intellectual property (WIPO, 2006). New additional training programmes for police officers, experts and agents of the Federal Revenue Department and the States' ministries of finance were to be introduced in 2006 with additional programmes foreseen in conjunction with the Intellectual Property Defence Association (ADEPI), a member of the CNCP (WIPO, 2006). Enforcement efforts have increased in recent years, as has the degree of co-operation among government agencies (WTO, 2004). Several operations involving federal, state and municipal bodies were conducted at various centres known for selling pirated products. Priority was initially given to stepping up control at strategic border points, such as Ponte da Amizade linking Brazil and Paraguay. Efforts were later made to intensify repressive measures at large markets and shopping centres in Sao Paulo, Rio de Janeiro and Brasilia. Other enforcement actions reported regularly included stepping up of raids and closures of large factories that produce counterfeit goods, and reports of arrests of criminals (WIPO, 2006). As a result, the value of merchandise destroyed by the Brazilian Revenue Service during the first six months of 2004 was almost five-fold the level of 2003. With respect to other forms of IPR infringement, there was a 16-fold increase in the value of goods destroyed during the two time periods (WTO, 2004).

	Enhanced efforts continued in 2005. During the first half of the year, four major joint operations involving the Internal Revenue Service, the Federal Police Department and the Federal Highway Police Department were carried out in the TBA area (Ministry of Justice, 2005), leading to sharply higher levels of seized goods, arrests and disruption in illegal commerce. This was also the case in 2006, with early indications that seizures reported for the period January to September 2006 had exceed those reported for the whole of 2005 (Ministry of Justice, 2006).
Programme evaluation and measurement	The Ministry of Justice published three detailed reports on efforts to combat counterfeiting and piracy during 2005-6 (www.mj.gov.br/combatepirataria/).
International co-operation	Initiatives taken at a regional level to protect intellectual property have included liaison with foreign governments to exchange information on measures directed against counterfeiting and piracy. Brazil has worked with its MERCOSUR partners to address counterfeiting and piracy through a 2003 amendment to its 1999 Regional Protection Plan (Carneiro and Santos, 2004). The agreement includes specific provisions for piracy and notably calls for members to: create a special department focused on the repression of piracy; improve intelligence sharing through the creation *inter alia* of a database dealing with piracy; and co-ordinate training and capacity building regarding IP enforcement. Operation Jupiter-South America was launched in November 2004. It was the first co-ordinated cross-industry, cross-border police operation to target counterfeiting and piracy in this way (Interpol, 2006). It involved the national police forces of Argentina, Brazil and Paraguay, the Brazilian Customs and representatives from pharmaceutical, recording, motion picture and tobacco cross-industry representative bodies. The operation centred on a number of intellectual property (IP) crime targets, all of which were significant counterfeiting plants or distribution centres. The results included a significant number of seizures and arrests. The Latin American Regional Forum, hosted by Brazil and Interpol, held in Rio de Janeiro in June 2005, under the auspices of the Global Congress on Combating Counterfeiting, adopted the "Rio Declaration", which recommended a series of steps to enhance the effectiveness of the fight against counterfeiting in the region, calling, *inter alia*, for better co-operation between the various stakeholders, as well as updated legislation in a number of areas (Global Congress on Combating Counterfeiting and Piracy, 2005). At the bilateral level, Brazil signed a Memorandum of Understanding with Paraguay in 2005 that established a bilateral group for intelligence on piracy. Brazil also signed a technical co-operation agreement on intellectual property with France in 2006 (INPI, 2007).
Awareness	One of the techniques used to increase awareness has been the publicised and open destruction of seized goods. Another is the use of the CNCP's (Ministry of Justice) website dedicated to counterfeiting and piracy related events and seizures. A new campaign aimed at young consumers was launched in March 2006. The campaign "Pirata: tô for a! Só uso original" (Piracy I'm out of it I only use originals) is being carried out through television, radio and advertising; in addition, tee shirts, hats and stickers promoting the campaign message are being distributed. The focus was initially on fairs and popular events and will be extended to primary and secondary schools, colleges and universities. The need to focus on young consumers was supported by a recent survey that indicated that 15-24 year olds were major consumers of infringing products. Along the same lines, the Prefecture of one of the towns in the São Paulo area launched a campaign "O barato que sai caro: (cheap can be expensive), which sought to inform the public of the negative consequences of piracy. In 2005, several seminars, conferences and events were held by the National Council against Piracy and other enforcement agencies. An agreement signed in August 2005 between the CNCP and the Department of Consumer Protection and Defence (DPDC) provided for counterfeiting and piracy to be included in training programmes made available to state consumer-protection agencies (PROCONS). Training was also given high priority in 2006.
Industry initiatives and co-operation	The Intellectual property Rights Protection Association (ADEPI) documents co-ordination between the public and private sectors: //www.adepi.org.br/. The ADEPI provides intelligence aimed at dismantling operations and arresting distributors of infringing goods and provides training for authorities (Ministry of Justice, 2005).

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CANADA

Institutional organisation	Several Canadian government departments and agencies are involved in dealing with issues related to intellectual property rights. On the technical and administrative side, the Canadian Intellectual Property Office (CIPO) is responsible for granting and administering the greater part of intellectual property rights in Canada (CIPO, 2006 and Garland and Want, circa 2001). CIPO's areas of activity include patents, trademarks, copyrights, industrial design and integrated circuit topographies. Management of IPR issues related to plant breeders' rights, however, is overseen by the Canadian Food Inspection Agency (CFIA). Canadian Heritage and Industry Canada are the key departments dealing with IP policy and legislation, whereas Foreign Affairs and International Trade Canada are the lead departments on most international IP files. With respect to criminal enforcement, the Royal Canadian Mounted Police (RCMP) is involved in cases of IPR infringements involving criminal offences. So are, to a smaller extent, provincial and municipal police departments. Regarding border enforcement, the Canadian Border Services Agency (CBSA), upon a court order, can detain suspected counterfeit and pirated goods at the borders.
Policy developments	In recent years, federal enforcement policies and programmes have sought to put more emphasis on border enforcement (Government of Canada, 2006). This has entailed interception by the CBSA of suspect counterfeit goods that come to their attention while administering the Customs Act. CBSA provides information to the RCMP who may authorise the seizure of the shipment as evidence of a Criminal Code offence.
Legal and regulatory framework	In Canada, intellectual property rights (IPR) are protected primarily under the following Acts: Trade-marks Act, Copyright Act, Patent Act, Industrial Design Act, Integrated Circuit Topographies Act, and Plant Breeders' Rights Act. Canada's intellectual property enforcement policy has relied primarily on civil enforcement by intellectual property rights holders (Government of Canada, 2006). Rights holders themselves are largely responsible for monitoring domestic markets for counterfeit and pirated products, with federal enforcement resources reserved for forms of infringements which constitute criminal offences; these would include infringements occurring on a commercial scale, and those involving public health and safety concerns (Government of Canada, 2006). Most infringements are addressed by parties through civil action. The Copyright Act does, however, include provisions for criminal sanctions for serious infringements. Under the Act, criminal offences are punishable by fines up to $1 million or imprisonment for a term not exceeding five years. The civil enforcement is encouraged by providing rights holders with remedies, such as injunctions, seizures and damages against unauthorised and infringing uses of intellectual property. The intellectual property rights regime has been modified periodically to address a number of issues. In 1997, for example, the government introduced a statutory damages provision in the Copyright Act to provide rights holders with a greater degree of redress. This has implications for trademark infringements as well, since such infringements can, in some instances, be addressed under the Copyright Act. Regarding criminal provisions, there are several criteria that have to be met in order for the RCMP to proceed with a criminal investigation in the case of copyright: it must be demonstrated that the accused acted with knowledge that the subject works were infringing goods; the infringed work must be original and duly protected; genuine goods must be distinguishable from counterfeits, and licensed versions must be distinguishable from non-licensed versions; credible evidence must establish the financial impact of the infringement on the complaining party. While there are no provisions in the Trade-marks Act for criminal enforcement, there is a section of the Criminal Code governing forgery of trademarks and trade descriptions. The primary offence is that of making or reproducing in any matter a trademark with the intent to deceive or defraud the public or any person; the punishment involves imprisonment for a term not exceeding two years. As for the border enforcements, measures are taken under the Copyright Act and the Trademarks Act, which permit rights holders, on court order, to request that the CBSA intercept infringing goods at the border (Government of Canada, 2006).
Enforcement developments	The RCMP has been increasing the resources devoted to fighting organised crime. Within the country, 19 investigators were dedicated to IPR enforcement issues. Also, collaboration between the CBSA and the RCMP has been increased. The RCMP provides intelligence to customs officials concerning commercial scale shipments of infringing products. Since December 2003, these two agencies have both been reporting to the Minister of Public Safety. In collaboration with the Canadian Department of Justice, and other relevant government departments and agencies, the two agencies are both currently engaged in the process of identifying Canadian intellectual property enforcement concerns (Government of Canada, 2006).

Programme evaluation and measurement	Two projects were carried out on the assessment of IP crime in Canada by the Criminal Intelligence Directorate of the Royal Canadian Mounted Police (RCMP): Project Saffron (2000) and Project Sham (a 2004 update).
International co-operation	Canada has been an active participant in various international forums dealing with counterfeiting and piracy, including the G-8, APEC, WTO and WIPO. Canada has also been active in promoting, through Interpol, the creation of databases that feature information and criminal intelligence useful for investigating and prosecuting copyright and trademark offences (Government of Canada, 2006). Information exchanges with other economies have also translated into common enforcement efforts and lead to some important seizures of counterfeit and pirated goods.
Awareness	In partnership with the Canadian Anti-Counterfeiting Network, in May 2006 the RCMP launched a national awareness campaign designed to educate consumers, retailers and the public in general, about the dangers and economic costs associated with counterfeit products as well as its connection to organised crime (RCMP, 2006).
Industry initiatives and co-operation	Within industry, a coalition of individuals, firms and associations have formed a Canadian Anti-Counterfeiting Network to combat counterfeiting and piracy in Canada and internationally (www.cacn.ca). The organisation has worked with government in a number of areas; activities have included the organisation of training seminars and, as mentioned above, the launching of a public awareness initiative, in partnership with the RCMP. Individual industry associations, particularly in the software, film, music and designer goods industries, employ their own enforcement personnel (Government of Canada, 2006). Industry investigators – often retired RCMP personnel – compile evidence and then turn it over to the RCMP to complete the investigation and pursue criminal charges.

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CHINA

Institutional organisation	In China, the responsibility for intellectual property (IP) is entrusted with different entities under the State Council. The State Intellectual Property Office (SIPO) is in charge of patents, the State Administration for Industry and Commerce (SAIC) is in charge of trademarks, while the National Copyright Administration of China (NCAC) is in charge of copyrights (OECD, 2005*a*). There are two levels for IP protection in China. Administrative bodies under the State Council - SIPO, SAIC and NCAC - generally examine, grant or register IPR and handle infringement cases of major importance; the local administrative authorities are responsible for the implementation of policies and for administering and enforcing IPR at the local level (WTO, 2006). To improve IP protection, the State Council created the National Working Group on IP protection in 2005, which comprises 17 different administrative authorities and judicial departments. The Working Group is based at the Ministry of Commerce (MOFCOM) and is administered by the State Office of Intellectual Property Rights; it is responsible for unified planning and co-ordination of national intellectual property protection and supervises important IPR cases (WTO, 2006).
Policy developments	In recent years, China has amended its IPR laws and has modified regulations on customs protection. After having focused on the improvement of the legislation, the government's focus is now shifting to enhancing law enforcement. This shift in focus is described in a White Paper on Intellectual Property Rights[95] issued by the Government in April 2005 (State Council, 2005; WTO, 2006). The State Office of Intellectual Property Protection issued an "Action Plan" [96] in March 2006, which sets out a number of initiatives to strengthen IP protection over the course of 2006. The "Action Plan" covers four major areas: trademarks, copyright, patent and import and export-related issues. It summarises a wide range of initiatives in the areas of legislation, enforcement, training, education, awareness raising, international co-operation and services to rights holders. The action plan also outlines enforcement campaigns with crackdown operations targeted towards trademark infringement (continuation of the "Mountain Eagle" Campaign, see below), copyright infringement (Operation "Sunshine" for audio-visual products). A special campaign is targeted towards combating infringement at trade shows (Operation "Blue Sky").
Legal and regulatory framework	In China, trademarks, copyright, patents and design are protected under three major laws and their complementary implementing regulations: the Trademark Law, which was adopted in 1982 and revised in 1993 and 2001; the Patent Law, adopted in 1984 and revised in 1992 and 2000; and the Copyright Law, adopted in 1990 and revised in 2001. In case of IPR infringement, civil actions accompanied by monetary fines are included in the Patent, Trademark and Copyright laws (WTO, 2006). The Patent Law allows fines up to RMB 50 000[97], or three times the illegal earnings from passing off another person's patent as one's own. The Trademark Law allows for compensation not exceeding RMB 500 000. The revised regulations of the Copyright Law authorise fines up to RMB 100 000 for copyright infringements. Under the Criminal Law, seven specific types of IPR infringement are regarded as a criminal act: counterfeiting registered trademarks; selling goods bearing counterfeit registered trademarks; illegally producing and selling representations of registered trademarks; forging another person's patent' copyright infringement; selling infringing reproductions; and infringing commercial secrets. For infringement of trademarks, patents and copyrights the infringer can be sentenced to up to three years of prison and/or a fine. If the infringement has particularly serious consequences - in terms of substandard quality or health and safety of the consumer - the punishment can be up to seven years imprisonment. The Chinese Customs Law forbids the import or export of goods infringing the IP rights protected by Chinese law. Regulations on "Customs Protection of Intellectual Property Rights" enable customs to seize imports and exports of goods infringing patents, trademarks and copyright-related rights on an *ex officio* basis (WTO, 2006). In order to enhance the efficiency of seizures by Customs, the owner of the intellectual property right may "record" or file their right in writing with the Customs (WTO, 2006). New regulations issued by the Customs administration in September 2004

95. See www.china.org.cn/english/MATERIAL/126297.htm.

96. See www.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=3326&col_no=102&dir=200604.

97. 1 USD = 7.7 China Yuan Renmimbi (RMB) (March 2007).

	regarding administrative penalties in the Customs context provide for fines not to exceed 30% of the value of the good confiscated, or RMB 50 000, whichever is lower.
Enforcement	Since 2004, the Government has undertaken several enforcement campaigns to combat counterfeiting and piracy. Between September 2004 and August 2005, a special one-year campaign was launched to protect IPR. Relevant administrative departments investigated and dealt with major IPR infringement cases in the fields of trademarks, copyrights and patents. This campaign focused on 15 key regions, such as Beijing, Shanghai and Tianjin and major distribution channels for counterfeit and pirated goods. Pirated discs and trademark infringements were the main targets of this campaign (State Council, 2005). In November 2004, the Ministry of Public Security launched a one-year national campaign titled "Mountain Eagle" against criminal infringement on trademarks to crack down major cases of IPR infringement (State Council, 2005). Chinese public security authorities initiated over 10 000 raids on offices, stores and warehouses. This campaign has been extended to a second phase (Nie and Wei, 2006). China has a dual mechanism for IPR protection. Under this system, the responsibility for IPR enforcement is shared between the State Council IPR administrations and the Courts and Procuratorate bodies. The majority of IPR cases is, however, handled by the administrative authorities (80% of the cases in 2005). Administrative enforcement Administrative authorities are empowered to: question the accused infringer; examine documents; search premises; freeze assets; issue an injunction order; confiscate and destroy counterfeit goods and the facilities specifically used in the infringement; and impose a penalty[98]. If the infringements are found to be so serious as to have constituted a crime, the case would be transferred to a competent judicial authority for criminal investigation. Regarding border enforcement, a co-operative mechanism has been set up between the General Administration for Customs of China (GACC) and other IP enforcement administrations, including SIPO, SAIC, the Ministry of Public Security and the Supreme People's Court. In addition, Customs has increased communication with enterprises to group information resources. Methods for checking and seizing infringement products have been improved. Judicial enforcement China has progressively established a system of specialised IP tribunals[99] and has developed trained judges to sit on specialised IP tribunal to hear civil cases. An IP holder may request the court to issue an injunction order or an interim injunction before formally lodging a complaint. Preservation of evidence is also available if part of the infringement is in danger of being destroyed. Under the Chinese civil law, damages are available. They are, however, compensatory, rather than punitive. Damages may be calculated based on profits gained by the infringer or losses suffered by the rights holder. Statutory damages are now also available if a plaintiff is unable to fully quantify its damage. Regarding criminal prosecution, the public security body is responsible for carrying out criminal investigations concerning IPR infringements[100]. Minor criminal cases are heard directly by the People's Court's First Instance, whereas the procuratorial system is responsible for cases endangering public order and national interest (WTO, 2006).
Programme evaluation and measurement	SIPO/the State Council produce an annual paper on "Intellectual Property Protection" in China outlining main achievements in the area of IP protection and enforcement (see SIPO, 2006).
International co-operation	China has engaged in exchanges and co-operation with other countries in the field of IPR. China and the United States established a framework for regular consultation on IP in 2000. It relied on roundtable discussions on IPR, and since 2003, China and the US have held these discussions every year. In 2004, the Intellectual Property Protection Working Group of the Joint Commission of Commerce and Trade (JCCT) was set up (WTO, 2006). China has also established a new platform to conduct exchanges with the European Union on IPR: both parties signed an agreement in 2003 to establish a China-EU dialogue on Intellectual Property. Since 2004, China has had rounds of talks with the EU. In addition, China has established dialogues and co-operation mechanisms on IP with Japan, Korea and France (WTO, 2006).

98. If damages are sought by the rights holder, the judicial route must be used since the administrative authority is not authorised to award damages; also the fines in the administrative system will revert to the state (China-Britain Business Council, 2004).

99. A few Basic People's Courts, which handle substantial IP litigation have set up IP tribunals. High People's Courts and Intermediate People's Courts of some cities have established IP tribunals. The Supreme People's Court set up the Intellectual Property Tribunal (now called Third Civil Chamber), whose role is to handle major IP cases and provide guidance for, and supervision of, IP cases across the country.

100. In China, an IPR dispute may be deemed criminal in certain circumstances, one of them being when the value of the goods exceeds the monetary threshold required for criminal prosecution -- there is a distinction in the threshold for individual or corporate infringement. The Supreme People's Court's interpretation on the IP sections of the Criminal Law in December 2004 lowered the minimum thresholds required for criminal prosecution for various IP violations.

	Bilateral dialogues have been established to strengthen IPR protection in China, notably through more efficient enforcement. Several US agencies, notably the Patent and Trademark Office, the Department of Justice and the Department of Commerce provided IP enforcement training. The European Patent Office has been engaged in a long-term co-operation with China since 1986 and has provided training for a large number of SIPO staff. Today, Chinese departments are in contact with corresponding departments in other countries and also with WIPO (State Council, 2005).
Awareness	Since 2004, China has been launching national public-awareness campaigns to educate the Chinese public on IPR protection. This included radio and TV programmes, newspaper inserts, awards and national local training programmes. The campaign also included the introduction of a television programme "Intellectual Fortune" broadcast in 20 provinces nationwide. Beginning 2004, the state designated a week in April every year as the week for publicising the importance of IPR protection and the government's results regarding IPR protection. This initiative aims to popularise general knowledge about IP protection and stress its vital role in promoting scientific and technological innovation.
Industry initiatives and co-operation	Industry representatives, notably the Motion Picture Association and the Business Software Alliance undertook numerous training and awareness raising programmes throughout China in 2005. Trainings have involved police, prosecutors, judges, customs officials, administrative agency enforcement personnel. The Quality Brands Protection Committee, which was established in March 2000, has launched many initiatives to broaden public awareness on the problem of counterfeiting and to strengthen the capacity of the enforcement system. Finally, Chinese companies have also formed alliances to protect their IP rights and fight counterfeiting and piracy. This is, for example, the case with the newly created copyright alliance comprising six leading Chinese companies. The alliance intends to act as a bridge between companies, government and the media and raise awareness about the damage created by piracy.

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EUROPEAN UNION

Institutional organisation	The competence for the protection and enforcement of intellectual property rights is shared between the European Union (EU) and its 27 Member States (MS). In the legislative field, most subjects have already been harmonised by EU Regulations (which are directly applicable as law in all MS) and Directives (which define the general lines but require national implementing legislation). Intellectual property rights such as copyrights and related rights, trademarks, designs or geographical indications have most of their rules defined at EU level. Regarding the enforcement aspects, the EU has already regulated civil and administrative proceedings, as well as a common regime for customs IPR infringements (see below). For the remaining field, *i.e.* the harmonisation of rules regulating criminal infringements, the European Commission issued a legislative proposal in 2005 that is currently undergoing the process of approval before the European Parliament and the Council (the representatives of the MS governments). The external aspects of trade-related IPR, both at bilateral and at multilateral level, are exclusive competencies of the EU, which acts on behalf of its 27 MS in all acts and negotiations with the World Trade Organization and with third countries (ex: negotiation of IPR clauses in Free Trade Agreements). On the legislative side, many areas are already defined at EU level. However, most of the "operational" competencies, responsibilities and means to fight against piracy and counterfeiting domestically and at the external border – such as police, prosecutors, courts and customs services -- are in the hands of the individual EU member states. Roles are split among the EU institutions as follows: ▪ European Commission: Has competence regarding the drafting and proposal of new laws harmonising the European IPR regime, as well as monitoring the implementation by MS of the guidelines defined at EU level. Externally, the Commission represents MS on bilateral and multilateral venues for all trade related IPR issues. ▪ European Parliament and Council of the European Union: On IPR issues, these two institutions are responsible for the approval of legislation. ▪ European Court of Justice and Court of First Instance: Under their general competence of examining the legality of Community measures and ensuring the uniform interpretation and application of Community law, the EU courts will issue jurisprudence relating to IPR issues on their own and in conjunction with national courts (preliminary rulings).
Policy developments	In November 2000, the European Commission issued an Action Plan on Combating Counterfeiting and Piracy in the Single Market. This Action Plan has appeared in the form of a Directive, harmonising the enforcement of intellectual property rights within the Community, covering a Regulation improving the mechanisms for customs action against counterfeit or pirated goods set by the previous Customs Regulation, and the extension of Europol's powers to cover piracy and counterfeiting. On the external side, the EC adopted in 2005 the Enforcement Strategy to step up the fight against counterfeiting and piracy in third countries. The Enforcement Strategy proposes the identification of priority countries where the efforts and resources of the EU should concentrate. Stress is put on technical co-operation and assistance to help third countries, but it also foresees the use of bilateral and multilateral sanction mechanisms available against countries involved in systematic violations. The European Commission also proposes a more systematic promotion of IPR mechanisms in multilateral, bi-regional and bilateral frameworks, as well as fostering awareness amongst users and consumers in third countries, and to establish partnerships with private entities, as well as with international organisations and countries sharing its concerns.
Legal and regulatory framework	The EU establishes its framework for IP protection mainly through Regulations (legislation directly applicable and with direct effect in all MS) and Directives (legislation that defines the main guidelines but that needs to be implemented by national legislation in each MS, with a degree of choice regarding the transposition. Directive 93/98/EEC has been replaced by Directive 2006/116/EC, which harmonises the term of protection of copyright and certain related rights. The period of protection is 70 years after the death of the author for a literary or artistic work, and 50 years after the event for the commencement of neighbouring rights. Concerning trademark law: in the EU, an applicant may register a trademark either within an individual EU member state (based on local trade mark regulations) or using the Community Trade Mark (CTM), which means that it is protected in all member states. Council Regulation (EC) No 40/94 of 20 December 1993 created the CTM, which is supervised by the Office for Harmonization in the Internal Market (OHIM) located in Alicante, Spain. A new Regulation adopted in 2004 made a number of changes to the Community trademark system in order to make it more effective.

	The EU patent legislation is complex. The 1973 Munich Convention on the European Patent provides for patents to be obtained for a number of countries, including all EU members, through a single application to the European Patent Office (EPO, which is not an EU institution). The 1975 Luxembourg Convention was intended to give unitary effect to European patents applied for in Community territory. In 2000, a proposal for a Regulation was put forward aimed at setting up a Community patent which would coexist with national patent systems and with the Munich Convention system. This Regulation is still being finalised. Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Design creates a unified system for obtaining a Community Design valid throughout the EC.
Enforcement	The "operational" competencies, responsibilities and means to fight against piracy and counterfeiting domestically, and at the external border, are in the hands of the individual EU member states. Police forces, prosecutors, courts, customs services and other administrative forces with enforcement responsibilities are mostly a national competence of each MS. Nevertheless, some EU institutions designed for judicial and police co-operation, such as Europol and Eurojust, and some instruments (such as European Arrest Warrant, freezing property and evidence[101] and financial penalties[102] that concern the mutual recognition of criminal judiciary decisions) can be applied to cases related to the violation of IP rights. On the legislative side, however, as mentioned above, several important areas have common rules, adopted by the EU: Directive 2004/48/EC on the enforcement of intellectual property rights harmonises the laws of the EU member states pertaining to enforcement of intellectual property rights via civil and administrative sanctions and remedies (criminal proceedings and sanctions are beyond its scope). It covers infringements of all IP rights and is based on "best practice" found in the EU. Member States had until 29 April 2006 to transpose the Directive's provisions into their national laws. Customs Regulation EC/1383/2003 sets out the conditions under which the customs authorities may intervene in cases where goods are suspected of infringing intellectual property rights. A proposal for harmonising the minimum threshold for sanctions and criminal proceedings, to support the Enforcement directive, was presented by the Commission in July 2005 in the form of a Directive. This proposal is still being discussed by the European Parliament and the Council of the European Union.
Programme evaluation and measurement	The Commission's Taxation and Customs Union Directorate (TAXUD) publishes an annual compilation of statistics on customs seizures based on data from member countries. The statistics are used for evaluating enforcement efforts as well as for tracking activities in counterfeiting and piracy more generally.
International co-operation	The EU Strategy for the Enforcement of IPR in Third Countries[103] provides for technical co-operation and assistance to help third countries with IPR enforcement. In addition, the Commission has intensified its bilateral co-operation, particularly with economies heavily affected by IPR violation practices. The main activities undertaken to implement the Enforcement Strategy: ▪ In October 2006, the European Commission announced a list of priority countries on which to focus activity and resources in the fight against piracy and counterfeiting. For each, an individual assessment was published[104], listing the main problems, the efforts made by the country in question and the measures to be implemented by the Commission. ▪ The EU established structured IPR dialogues with several priority countries. The purpose is to contribute to an enhanced protection and enforcement of IPR. EU right-holders are allowed to participate in some sessions. Assessment of progress is made at the annual high-level trade meetings. ▪ EU-US co-operation: At the EU-US June 2006 Summit, the parties launched an Action Strategy to combat IP infringement in third countries. It provides for closer customs co-operation, including joint border enforcement actions; joint enforcement in "third countries" with teams of EU and US diplomats sharing data and intelligence and undertaking joint surveillance activities; joint technical assistance initiatives and strongly increased collaboration with, and in support of, the private sector. A Working Group with enforcement officials from both sides was created and has been meeting twice a year, with frequent and productive contacts at the working level. ▪ EU-Japan co-operation: The EU-Japan Dialogue on IPR, which started in 2003, continues to hold annual meetings, where issues of mutual concern regarding IPR enforcement are discussed. Parties are currently in the process of reinforcing this co-operation.

101. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

102. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

103. http://ec.europa.eu/trade/issues/sectoral/intell_property/strategy_tc.htm

104. http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_epc_countries_en.htm

	▪ IPR Experts in Delegations: IPR experts were placed in Beijing and Moscow. In Bangkok, there is a customs expert dealing also with enforcement problems in the ASEAN region. These experts work on the creation of a network with experts from the US and EU member states. They also work closely with local EU industry representatives. ▪ WTO: The EU has led the debate on enforcement in the WTO/TRIPs Council, by submitting a Communication in June 2005 proposing a detailed assessment of enforcement practices among the WTO membership. Since then, the US, Switzerland and Japan have joined the EU efforts. ▪ G8: The EU has been actively involved in the G8 IPR agenda since the 2005 Gleneagles Summit. The EU is one of the main contributors to the ambitious agenda set by the German G8 presidency for 2007, which includes customs and technical assistance best practices and increased co-ordination, technical assistance pilot projects in South America, South Africa and Indonesia, co-operation against organised crime (Lyon-Roma Group), a partnership with the private sector to promote good business practices and an outreach process to discuss innovation and IPR with emerging economies at the OECD. ▪ Bilateral trade agreements are increasingly becoming another important tool to promote and enforce IPR. The EU has shifted its approach towards the inclusion of detailed sections modelled on EU legislation. These provisions take into account development aspects, but also effective rules to tackle piracy and counterfeiting. ▪ Customs co-operation agreements: Several of these bilateral sectoral agreements cover, inter alia, customs controls of fake goods. These agreements, inter alia with India and China provide for training and exchange of best practices. ▪ The Commission is a major provider of trade related IPR assistance[105]. It has three regions covered by specific multi-year IPR programmes worth several million Euros each: China, ASEAN and the Balkans. In many other regions, IPR related initiatives are covered by broader trade or customs programmes. Pursuant to the Enforcement Strategy, the focus of these initiatives is increasingly on enforcement. A new multi-year programme has been launched in China (IPR II).
Public awareness	The European Commission promotes initiatives to raise public awareness of counterfeiting and piracy with a focus on third economies and European consumers: ▪ As mentioned above, programmes for technical co-operation and assistance for third economies are in place, and the Commission sponsors community-wide campaigns for increasing public awareness of the negative and dangerous consequences of consumer product infringements. ▪ The 2006 Enforcement Survey[106] was conducted and published by the European Commission. This survey gives a detailed state-of-play of the enforcement situation in 40 countries and describes the actions available against infringements, the most effective mechanisms, best practices, etc. On the other hand, there is also extensive information about the difficulties with which EU rights holders are confronted when operating in third countries. It is a useful source of information for SMEs. ▪ The European Commission is also reviewing the functioning of the IPR Helpdesks[107] and Innovation Relay Centres[108] to allow them to assist SMEs dealing with IPR in third countries. ▪ In 2005, the European Commission sponsored the drafting of a Guidebook on Enforcement of Intellectual Property Rights. The Guidebook is mainly intended to assist public authorities in developing and least-developed economies in their efforts to put in place systems and procedures for the effective enforcement of IPR. ▪ Seminars and Congresses: Commission officials participate frequently in the most important international IPR conferences (Global Congress on Counterfeiting, Patinnova, WIPO and WTO conferences, etc.). On these occasions, they present and promote the EU approach to IPR enforcement in third countries.
Industry initiatives and co-operation	The European Union has put in place a policy of regular consultation and involvement of rights holders in key initiatives. Some examples are: ▪ The IPR dialogues with third countries, where on each occasion, there is a session in which the private sector participates and has an opportunity to discuss specific situations with the relevant local enforcement authorities. ▪ The creation of the above mentioned IPR Helpdesks and Innovation Relay Centres to assist IP right-holders. ▪ The association with industrial sectors and associations concerned on several IP related processes such as the transatlantic co-operation, the OECD or the G8.

105. http://ec.europa.eu/trade/issues/sectoral/intell_property/pr030806_en.htm#1
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FRANCE

Institutional organisation	The *Institut national de la propriété industrielle* (INPI) is involved with a range of intellectual property issues. It notably registers IP rights (patents, trademarks and design), is involved in the creation of IP law and provides advice to firms and rights holders. A National Anti-Counterfeiting Committee (CNAC) was set up in 1995. Its general secretariat is in the hands of the INPI. The CNAC represents rights holders and is a forum for the exchange of ideas and dialogue between government and the private sector. It co-ordinates the action undertaken by different government departments and representatives of the various sectors of activity concerned by counterfeiting. It organises efforts aimed at keeping business people informed, increasing consumer awareness and training enforcement units. The main players involved in measures to combat counterfeiting and piracy are the Ministry for Economic Affairs, Finance and Industry (notably the French Customs – DGDDI -- and the Directorate-General for Competition, Consumption and the Repression of Fraud -- DGCCRF); the Ministry of Defense; and the Ministry of the Interior (national gendarmerie and judicial police).
Policy developments	A 10-point government action plan[109] adopted by the Council of Ministers in 2004 has strengthened the fight against counterfeiting and piracy. Amongst others, measures have been introduced to: step up co-operation between administrations in order to increase the effectiveness of their actions (an inter-service working group has been set up); reinforce criminal action and the resources available for dismantling criminal counterfeiting networks; improve the calculation of damages for rights holders; raise public awareness; and increase international co-operation to combat counterfeiting and piracy.
Legal and regulatory framework	Intellectual property rights – copyright, neighboring rights, designs and models, patents, trademarks, topography of semiconductors, plant varieties and appellations of origin – are principally protected by the intellectual property code. Civil and criminal action may be taken against persons infringing intellectual property rights. By taking civil action, the injured party can ask for damages to be paid, for the counterfeiting activities to be banned, and for the counterfeit goods to be confiscated. In the intellectual property code, the law provides victims with a procedure to facilitate furnishing proof of alleged infringement. The procedure in question, known as the "search and seizure order" (saisie-contrefaçon) permits the searching of the premises of the accused and the seizing of samples of counterfeit goods. Besides, interim measures are available to compel the infringer to stop infringing activities. The transposition of Directive 2004/48/EC will strengthen French legislation on the conservation of elements of proof, remedies, and will allow for the calculation of damages to be adapted. The French criminal provisions establish three different levels of sanctions. Penalties range from a: EUR 300 000 fine and three years in prison for most common offences involving copyright, trademarks, designs and models, patents, rights on a data bank; a EUR 400 000 fine and four years in prison when trademark infringement amounts to a real commercial strategy; a EUR 500 000 fine and five years in prison when the infringement is the work of an organised group[110]. Penalties also apply to the consumer of counterfeit or pirated products. To combat counterfeiting and piracy on the Internet, the 1 August 2006 law and the 23 December 2006 decree, introduced penal sentences in case of circumvention of the protection of digital products (protected works and software). Counterfeiting of trademarks is also a Customs offence in France; the Customs code provides for a prison sentence of maximum three years. It can be increased to 10 years when the offences are committed by an organised group.
Enforcement	French Customs (DGDDI) has extensive powers to conduct operations against infringements of trademarks, copyright, design and models, whether held or circulating throughout the country. Customs can act *ex officio* or on the request of rights holders; it can initiate a seizure procedure without prior authorisation if goods are presented under an infringing trademark. In line with EU regulation (EC) 1383/2003, French customs control not only imported, but also exported or re-exported goods. The DGCCRF can act *ex officio*, or on the request of rights holders, and is responsible for addressing trademark offences on French soil. It can seize suspect goods without court order if they are a hazard to consumer health

109. www.premierministre.gouv.fr/chantiers/consommation_637/fiches_641/lutte_contrefacon_les_dix_50846.html

110. The aggravating circumstance of committing an act in an organized group applies with respect to trademarks, copyright, designs, models and patents.

	and/or safety. The judicial police (*gendarmerie nationale* and police) conduct investigations into counterfeiting - including those involving organised networks - under the supervision of magistrates. A special unit focuses on combating counterfeiting. Since 1999, French Customs (DGDDI) can also conduct investigations into trademark infringement. In line with the 2004 governmental action plan, the number of controls on the French territory has increased: Customs has been set a target of 10% annual increases in seizures. Controls performed by the DGCCRF, the judicial police and the *gendarmerie* have also been stepped up. The number of firm prison sentences announced has risen. As efforts are geared towards stopping counterfeit goods at borders, products are mainly intercepted at airports and ports. With infringing goods circulating increasingly via small consignments dispatched by post and by express freight, checks on such consignments have been stepped up. Besides, the Customs authorities have also increased their controls in markets and fairs, particularly during the summer months. The surge in the purchases of counterfeit products via the Internet is a trend that Customs is trying to halt by intercepting goods distributed by express freight.
Programme evaluation and measurement	The CNAC records measures taken in France and abroad to combat counterfeiting and piracy and suggests ways of improving the existing system.
International co-operation	France is involved in bilateral and multilateral initiatives to increase the protection of IPRs. Inter-ministerial bilateral committees have been set up with Italy (2002) and Russia (2001) to exchange best practice, set mutual annual targets and define common actions. France has regular exchanges with Morocco and Tunisia to set up national committees to combat counterfeiting. France has also networked intellectual property experts in the commercial and financial sections *(missions économiques)* of its embassies in over 80 countries to facilitate exchanges regarding IPR protection with other countries. Finally, the INPI has concluded co-operation agreements with 25 countries to exchange experience on IPR related issues. At the multilateral level, France suggested at the Essen G7 Summit (9-10 February 2007) the creation of an inter-governmental body, based on the model of the Financial Action Task Force (FATF), to develop and promote national and international policies combating counterfeiting and piracy. The objective would be to facilitate the exchange of information, the adoption of common standards and the identification of best practice. In addition, France supports the initiatives of WIPO, the European Patent Office (EPO) and the Office for Harmonization in the Internal Market (OHIM).
Awareness	The CNAC is central to awareness-raising schemes: it has co-ordinated numerous communications campaigns with private partners. In 2004, the CNAC organised "Danger, counterfeiting" (*Contrefaçon danger)*, a campaign designed to alert the French to the consequences of the phenomenon and increase consumer vigilance. A whole range of awareness tools was deployed using the press, radio and television, an Internet site, information brochures, and posters in town halls, shopping centres and streets in five big towns. Information sheets were published for SMEs-SMIs. A travelling stand on counterfeiting was designed for trade fairs. A travelling exhibition was put together jointly by the INPI and the CNAC. Practical guides were produced for consumers and professionals. A monthly information letter on counterfeiting and piracy (*Contrefaçon riposte*) was also released. In April 2006, the Ministry for Economic Affairs, Finance and Industry, the INPI and the CNAC launched a wide-ranging media campaign entitled "Counterfeiting, no thank you", the aim of which was to make the public aware of its responsibilities as regards counterfeiting. The campaign used television, putting out five 15-second commercials, and also the Internet, with advertising banners and an on-line Internet site[111]. The campaign was extended through the summer months, which is when consumers are most frequently targeted.
Industry initiatives and co-operation	The *Comité Colbert*[112] and the *Union des Fabricants* have organised awareness campaigns in partnership with the public authorities. In June 2003, the *Comité Colbert* launched long-term poster campaigns in Paris airports in conjunction with Customs and under the aegis of the CNAC. In June 2004, it organised an awareness operation at Roissy-Charles de Gaulle airport, which was aimed specifically at passengers on France-Italy flights. Since 2004, the Union of Manufacturers, in partnership with the public authorities, has organised an awareness campaign on the beaches of the Côte d'Azur.

111. www.non-merci.com

112. The Comité Colbert is an association grouping together France's leading luxury brands.

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INDIA

Institutional organisation	In India, IP laws are administered by different offices. The Patent Office deals with patents and design; the Trademarks Registry administers trademarks. Both the Patent Office and the Trademarks Registry have a head office as well as local branches in main towns. The Patent Office and the Trademarks Registry are under the control of the Office of the Controller General of Patents, Designs and Trademarks (Ministry of Commerce and Industry). The Copyright Office (Ministry of Human Resources Development) administers copyrights under the control of the Registrar of Copyrights. The Copyright Board, a quasi-judicial body, was constituted in 1958. The Board is entrusted with the task of adjudication of disputes pertaining to copyright and hears appeals against orders of the Registrar of Copyrights. The government of India has constituted a Copyright Enforcement Advisory Council (CEAC) in order to improve copyright protection. The CEAC meets about twice every year; members include representatives of copyright industry organisations and chiefs of state police forces.
Policy developments	The Indian government has taken several steps to improve IP protection. It has changed its IP legislation (see below), but also focused efforts on building infrastructure and ensuring that IP training programmes are provided. Regarding enforcement, the government has promoted the creation of specialised IP police cells at the state level. The government financed the modernisation of the patent information service, as well as the Trademark Registry. Intellectual Property office buildings (with Patent Offices and Trademark Registries in one location) are to be set up in Delhi, Chennai, Mumbai and Kolkata. The government has also announced the setting up of an Intellectual Property Management Institute in Delhi (Chawla, 2006).
Legal and regulatory framework	The Trade Marks Act, 1999 was modified in 2003. It provides for increased and more stringent provisions to deal with counterfeiting of trademarks. The definition of trademarks has been enlarged and now includes the shape of goods and packaging. It is also applicable to service marks, well-known trademarks and associated marks (World Trademark Law Report, 2006). Registration of trademarks, including services marks, is not mandatory under the Act, but it facilitates its validity in case of legal proceedings. Amendments introduced in the 1957 Copyright Act have made offences for counterfeiting and piracy more stringent. The Copyright Act provides for civil, criminal remedies and border measures to prevent importation of infringing copies. The Patents Amendment Act, 2005 and the Patent Rules, 2005 have incorporated changes to the patent legislation, allowing for example product patents to be introduced in the pharmaceuticals sector. The Indian Design Act, 2000 governs the copyright of an industrial design. Civil remedies available against infringement of trademarks, copyright, patents and design are: an injunction, damages and compensation, and confiscation of infringing articles. Parties can seek criminal remedies in case of trademark and copyright infringement. Punishment and fines have been enhanced. Sentences provide for imprisonment of six months to three years with, or without, a fine. Fines can range from IND 50 000, to a maximum fine of IND 200 000[113]. In addition, the Indian Penal Code has provisions to protect consumers from being deceived by traders or manufacturers of counterfeit goods (Ranjan, Narula and Paul Taj Kunwar, 2004). Administrative remedies are available to copyright holders to prevent the importation of copyright-infringing goods. They can make an application to the Registrar of Copyright who is empowered to enter facilities where illegal copies are thought to exist. An order of the registrar can bring into play the provisions of the Customs Act, 1962: custom authorities will then detain and confiscate all infringing copies. The Indian Customs Act, 1962 has a provision to prohibit import and export of deceptive goods. Under existing provisions, once customs officials have accepted a complaint from a rights holder, they would wait for a permanent injunction from the court (Ranjan, Narula and Paul Taj Kunwar, 2004).
Enforcement	Enforcement in the Indian domestic economy is primarily the responsibility of the state governments, whereas the national customs authorities have responsibility for enforcement at the borders. The national government has been working on the promotion of strengthened enforcement at the state level and has

113. 1 USD = 44.5 Indian Rupees (IND) (March 2007).

	asked each state to set up special taskforces to counter piracy. Special cells for copyright enforcement have been set up in states and union territories. Cities such as Delhi, Mumbai and Chennai have created specialised IP police cells to fight counterfeiting and piracy. The Trade Marks Act and the Copyright Act have given police officers of a certain rank the power to search and seize counterfeit goods and all instruments involved in committing the offence, without warrant. Police can act when a complaint is made by the rights holder. Under the Trade Marks Act, a police officer must obtain the opinion of the Registrar of Trade Marks to conduct a raid (Ministry of Consumer Affairs, Food and Public Distribution, 2006; WTO, 2002). During 2004 and 2005, police have increased *ex officio* actions. More raids have taken place in major cities, such as Delhi and Mumbai, and in some states such as Tamil Nadu, Kerala, Maharashtra and Gujarat. Regarding judicial enforcement, Indian civil courts have handed down landmark rulings in trademark and patent cases (Anoop Narayanan, undated). Courts have been liberal in granting police assistance in carrying out search and seizure at the infringer's premises. The threshold requirement for granting an Anton Piller[114] order has been simplified. Since 2004, a damage culture has also emerged in IP litigation. Indian courts, especially the Delhi Court, have handed down a series of decisions granting compensatory, as well as punitive damages (Agrawal and Mehra, 2006), showing that there is a trend towards increasing damages being awarded.
Programme evaluation and measurement	The Office of the Controller General of Patents, Designs, Trade Marks and Geographical Indications releases an annual report that reviews the activities of the different offices. The CEAC periodically reviews the progress of enforcement of the Copyright Act and advises the government on measures for improving enforcement.
International co-operation	India has strengthened the dialogue with foreign partners on IPR protection in the context of a framework of understandings on trade and investment, or technical co-operation. The dialogue between the EU and India has been strengthened following the EU/India Summit in 2005. As part of the decision to increase bilateral trade and economic co-operation, it was decided to exchange further on IPR related issues. At the third ministerial-level meeting of the U.S.-India Trade Policy Forum (2006), India and the United States agreed to an action plan directed towards IPRs. The two sides committed to co-operate in the field of IPR, notably on capacity building activities, human resource development and public awareness programmes. Japan and India confirmed that their governments would co-operate in capacity-building activities, including the development of human resources (2006 Joint Statement: towards a Japan-India strategic and global partnership).
Awareness	The Government in association with organisations (such as WIPO or the Chambers of Commerce) or Universities, has initiated a number of seminars, workshops and roundtables throughout the country for raising awareness on current issues linked to IP and to discuss problems linked to counterfeiting and piracy in particular. An Intellectual Property Training Institute (IPTI) has been set up by the Office of the Controller General of Patents, Designs and Trade Marks. It organises diversified IP training programmes for various levels of user groups (government, private sector and public at large) on IP rights, including trademarks, patents, design and copyright. The training is provided by experts involved in the working of the IP system. Various academies and institutions in several Indian States have included IP in their regular training programmes, including: the National Policy Academy, Hyderabad; the National Academy of Customs, Excise and Narcotics, Faridabad; and the National Judicial Academy, Bhopal; the Small Industries Service Institute, Delhi. The Government of India has taken copyright specific measures and has published a free "Handbook of Copyright Law" for raising IP awareness amongst stakeholders, enforcement agencies, scientific and academic communities and the general public.
Industry initiatives and co-operation	Industry has taken initiatives to raise awareness on counterfeiting and piracy. It has also taken concrete measures to assist public officials in the enforcement effort, conducting raids and promoting the creation of IP cells in the police of certain Indian states. Many companies have launched large-scale search and detection campaigns on their own. Some have targeted raising retail awareness on counterfeiting and piracy. A Brand Protection Committee (BPC) was set up under the aegis of the Federation of Indian Chambers of Commerce and Industry (FICCI) in 2000. The BPC has set in motion the creation of special IPR cells in certain states, such as Madhya Pradesh and Maharashtra. It has also initiated conducting enforcement raids in high infringing markets in Delhi, Ahmedabad, Bangalore, Mumbai and Indore.

114. The Anton Piller order is a court order that provides for the right to search premises and seize evidence without prior warning. It is used to prevent the destruction of incriminating evidence and is used particularly in cases of alleged trademark, copyright or patent infringements.

The FICCI has launched a National Initiative against Piracy and Counterfeiting (NIPAC) to raise awareness on counterfeiting and piracy and strengthen capacity of the enforcement system. The initiative involves mass awareness-raising campaigns, organising workshops with judges and educational institutes.

The Confederation of Indian Industry Alliance on Anti-Counterfeiting and Piracy (CAAC) held its launch programme in 2004. Its objective is to promote a stronger enforcement system by spreading awareness among enforcement agencies at central and state levels. As part of its 2004-2005 activities, the CAAC organised workshops at regional levels involving enforcement agencies of the region to facilitate the set up of an IP cell.

The Anti-Counterfeit Coalition of India (IACCI) was founded in 2006. Its efforts in fighting counterfeiting and piracy in the IT sector include high media campaigns, road shows and conferences.

The Indian Music Industry (IMI) has organised the creation of an anti-piracy cell in three regional offices Mumbai, Delhi and Kolkata. With the help of the police, IMI have raided various manufacturing units, shops in Ahmedabad, Delhi, Patna, Vishakapatnam and Chennai.

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ISRAEL

Institutional organisation	The main institutional entity responsible for national IPR legislation is the Legislation and Legal Counsel division of the Ministry of Justice. IPR policy is co-ordinated notably by the Ministry of Industry, Trade and Labour and the Ministry of Justice. Within the Ministry, the Patent Office ensures legal protection for industrial property, and in particular, issues patents and registers designs and trademarks following an examination of their eligibility for exclusive rights. The Office also provides advice on other matters related to industrial property rights. IP enforcement bodies include the Ministry of Justice, Police, the Customs Authority, the State Prosecutors Office, and the Tax Authorities. While each of these entities has its specific function, integrating and co-ordinating those functions and institutions has been achieved through the establishment of an inter-ministerial Enforcement Forum directed by the Ministry of Justice.
Policy developments	The government has given priority to increased co-operation amongst its enforcement bodies and enhancement of its enforcement mechanisms, and to training and awareness raising programmes.
Legal and regulatory framework	A comprehensive statutory and common law system covers acquisition, maintenance, and enforcement of rights in patents, designs, registered and unregistered trademarks, trade names, appellations of origin, trade secrets, integrated circuits, plant breeders' rights, copyright and related rights. Many of the intellectual property statues in Israel find their roots in British Mandatory law. Additional and overlapping protection for IP can be obtained pursuant to other legislation, such as the Commercial Wrongs Law and the Civil Wrongs Ordinance. The Patents Law of 1967 and its amendments and the Patents Regulations govern the majority of issues relating to patents. Patents are granted for 20 years from the date of filing. Patents for medicaments in some circumstances may be eligible for a term extension of up to five additional years. Trademarks are governed by the Trademarks Ordinance of 1972. Registration of a trademark may be renewed for as long as it is in use in Israel and maintains its distinctive character. Common law rights in trademarks may be established without registration, merely on the basis of use, and will be protected pursuant to the law of passing off contained in the Commercial Wrongs Law. The major legislation relevant to copyrights and related rights includes the Copyright Act of 1911, the Copyright Ordinance 1924, the Performers and Broadcasters Rights Law and their amendments and Orders. Designs are registered and are governed by the Patents and Designs Ordinance, 1924. Statutory legislation also exists with respect to appellations of origin, geographical indications, trade secrets, topographies of integrated circuits and plant breeders' rights. The statutory and common law system provides for pre-judgment remedies, such as injunctions and ex parte [115]orders of attachment, search and seizure orders, and customs searches and seizures. Final remedies include permanent injunctions, accounting of profits, delivery up, destruction of the offending goods and monetary damages and costs. Criminal sanctions are available, *inter alia*, for counterfeiting of trademarks, copyrights and other wilful use of false trade descriptions. Copyright piracy is punishable by up to five years imprisonment and fines of up to 2 million shekels. Trademark counterfeiting is punishable by up to three years imprisonment and fines of up to 1.5 million shekels[116]. Custodial sentences to date range in duration from a few months to two years' incarceration, and the trend is towards greater judicial willingness to impose increasingly severe penalties. Over the past five years, approximately 25 offenders have served jail time in Israel for IPR criminal offences, and many others have received fines, community service and suspended sentences.
Enforcement	Civil and criminal cases are heard in the general court system, which is comprised of magistrates courts, the district courts (higher courts) and the Supreme Court. Infringement matters in all fields of intellectual property will either begin in the magistrate courts or in the district court, depending on the value of the amounts in question. Criminal infringement actions will generally be heard by the district courts. Criminal proceedings are generally initiated by the State; however, private persons may also initiate criminal proceedings in certain intellectual property cases. Increasingly, the courts have proceeded to pre-trial detention of offenders, without opportunity for release on bail, pending completion of their trials. Recidivists with prior IP convictions will frequently receive custodial sentences. In addition, piracy may lead to prosecutions for tax evasion.

115. "Ex parte" means "from one side only".

116. 1 USD = 4.2 Shekels.

	The commitment to enforce IPRs has been strengthened in several branches of government, in particular the police, the State Prosecutors Office and the customs and tax authorities. Additionally, legal advisers specialising in intellectual property provide regular legal support to enforcement bodies, providing them with legal opinions, co-ordinating litigation strategies, and finding solutions to problems that arise in the normal course of enforcement activities. The Ministry of Justice, the Attorney General, the Police Units, the Tax Authority and other relevant ministries have combined efforts to combat intellectual property violations. To this end, the ministries have allocated additional funds, and have established a special Intellectual Property Unit of the Israeli Police force. The police unit is divided into several regional units, that are responsible for carrying out investigations and raids in their geographical regions, and a national unit that is responsible for co-ordinating investigations between the regional units, legal counselling and intelligence gathering on a country wide level. The Police maintain a database on intellectual property rights; and the customs, tax and police authorities have a special permit to exchange information. The Customs Authority, in co-ordination with rights holders and prosecutors, plays a central and active role in the enforcement of intellectual property rights through its control of merchandise entering Israel. Merchandise suspected of violating trademark or copyright is detained and relevant rights holders are notified. Rights holders are given an opportunity to inspect the suspected goods prior to their release, and when a court action is commenced such goods will be detained until the end of such proceedings. Authority to prosecute offenses against specific intellectual property laws rather than general customs legislation was granted to those legal advisors in the Customs Authority who prosecute customs offences.
Programme evaluation and measurement	The members of the Inter-ministerial Enforcement Forum meet regularly to review the activities of the various enforcement agencies involved in intellectual property and to find solutions to legal and administrative problems that arise. The Forum helps to ensure that accumulated experience is constantly being reinvested into the enforcement infrastructure.
International co-operation	Customs has established training programmes with countries such as the United States.
Awareness	The Ministry of Justice takes a leading role in providing on-going continuing legal education seminars for judges, prosecutors, police, customs agents and government office legal advisers. The judiciary also engages annually in specially designed, continuing-education programmes on IPR legal issues. In 2004, the Ministry of Justice contributed expertise to the Business Ethics Center of Jerusalem for its publication of a 35-page pamphlet entitled "Educating for Intellectual Property Rights". Industry groups, too, contributed their expertise to this project. In addition, the Ministry of Justice IP legal advisers lecture before Bar Association groups, the Institute for Continuing Legal Education of Judges and other related professional and civic organisations. IPR awareness-raising has been an important tool in sensitising judicial and public attitudes to the gravity of IPR crimes. As a result, both the public and the courts are taking IPR crime more seriously now than they did in the past, and penalties for IPR crimes are becoming more severe.
Industry initiatives and co-operation	The Ministry of Industry, Trade and Labour is currently reviewing policy on this matter.

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ITALY

Institutional organisation	The Ministry of Economic Development - particularly through its Patent and Trademark Office - defines industrial property policies and administrates patents, trademarks and designs rights. It oversees the drafting of IP laws and elaborates and carries out IP policy at the national level. Copyright and related rights are administrated by the Copyright Service of the Ministry for the National Heritage. The Patent and Trademark Office and the Custom Agency are the main actors involved in defining anti-counterfeiting and anti-piracy policies. The Ministry for Cultural Goods and Activities is also in charge of copyright piracy. In 2005, a special public body -- the office of the High Commissioner for the fight against counterfeiting and piracy -- was created. It serves as a clearinghouse for IPR policies: it co-ordinates policies and strategies for protecting IP rights, studies and develops proposals on legislation linked to IPR, assesses enforcement activities, is involved in awareness-raising initiatives and provides assistance to the private sector. Enforcement is carried out by the Customs Agency and the police forces (Guardia di Finanza, Polizia locale, Polizia di Stato, Carabinieri and Polizia Forestale).
Policy developments	Over the last four years, measures have been taken to strengthen the Italian IP system as a whole. A new Industrial Property Code was issued in 2005 (it replaces 40 previous laws). Specialised IP sections were established in courts in 2003, to ensure a more rapid and efficient definition of judicial proceedings on IP matters.
Legal and regulatory framework	In Italy, Intellectual Property Rights are protected by the new Industrial Property Code (D.lgs 30/05), by the Law 633/1941 concerning copyright and by EU legislation (Regulation 1383/2003 EC and Directive 2004/48/EC). A party can take both civil and criminal actions to protect its rights. The new Industrial Property Code has allowed for shorter timeframes for judicial decisions by replacing the ordinary judicial procedure with company law procedure. In the case of civil action, the owner of the right can ask for precautionary measures. If the violation has been ascertained, the judge can order the inhibition of manufacture, commerce and use of goods, can dispose for their destruction, and assign the goods to the rights holder. Following to the implementation of directive 2004/48/EC, the judge will also consider the negative economic consequences for the rights holder when awarding the damages (*e.g.* missed earnings, moral damages suffered from the violation). The rights holder can ask for the profits of the infringer instead of compensation for the loss of profits, or as far as the amount exceeds such compensation. The Italian criminal code protects IP rights under the following articles. These provisions were recently integrated into the new Industrial Property Code. ▪ Article 473 “Counterfeiting, forgery and use of signs which distinguish creative works or industrial products”. Penalties can range to up to two years imprisonment and a fine of up to EUR 2 065. ▪ Article 474 “Introduction into the State or Commerce of products bearing fake signs”. Penalties can range from two to five years imprisonment and a fine from EUR 516 to EUR 10 329. ▪ Article 514 “Fraud against the national industry. Penalties can range from one to five years imprisonment and a fine of up to EUR 516. ▪ Article 517 “Sale of industrial products with misleading marks”. Penalties can range from an imprisonment of up to one year and fine of up to EUR 20 000. In addition, article 127 of the Code punishes the manufacturing, sale, display, use and introduction into the State of objects in violation of industrial property ownership with a fine of up to EUR 1 032. Both the intention to cause damage and the act of using the product are punishable by law. The violation of the copyright is punished with imprisonment from six months to three years and with a fine from EUR 2 582 to EUR 15 493. The Law Decree No. 35 of 14 March 2005 (Law No. 80/05) establishes that a consumer can be subject to a EUR 10 000 administrative fine for purchasing or accepting a product without ascertaining its legitimate origin, due to its quality, the terms of sale, or the price offered.

Enforcement	In Italy, different police forces are competent for combating counterfeiting. The Guardia di Finanza (*i.e.* financial police) is most involved and operates on the whole national territory. It is responsible for the prevention, investigation and suppression of violations of IP rights, and it also enjoys supervisory powers (*e.g.* preventive intelligence operations). It is tasked with discovering centres of production and distribution as well as commercial channels. The Polizia locale (local police) has territorial boundaries (it can only act within a city or a province). It is in charge of patrolling city centres, seizing products, examining transit documents. It has the power to fine those who knowingly purchase counterfeit goods in markets. Finally, the Custom Agency plays an important role in regard to the flow of goods through Italian customs. In line with Regulation no 1383/2003, the Custom Agency has the power to intervene in the case of goods suspected of violating IP rights, suspend their release, arrange for them to be blocked and to inform the rights holder. Customs action may be carried out on imports, exports and goods in transit or transhipment. Customs can act *ex officio* when there are sufficient grounds to suspect a violation, or upon request of the rights holder. As soon as the expertise on the goods has been done and evidence obtained, the Customs has to inform the Judicial Authority. Article 474 of the Penal Code can then apply. Since 2003, specialised IP sections have been established at the Courts and Courts of Appeal of Bari, Bologna, Catania, Florence, Genoa, Milan, Naples, Palermo, Rome, Turin, Trieste and Venice. These specialised sections have jurisdiction in disputes regarding patent, utility model, trademark, new plant variety, design and copyright infringement. They are also competent for unfair competition affecting the protection of industrial and intellectual property. The actions are heard by a panel of three judges. In actions related to IPR disputes, a shortened proceeding has been introduced to speed up judicial decisions.
Programme evaluation and measurement	The High Commissioner for combating counterfeiting and piracy is notably charged with the monitoring and gathering of data on counterfeiting and piracy. He also supervises the prevention and repression activities carried out by police forces and customs. Anti-counterfeiting activities carried out in the course of the year are to be published in a report.
International co-operation	Co-operation programmes have been carried out between the Patent and Trademark Office and other agencies. A network of IP helpdesks has been set up in markets considered sensitive by Italian enterprises (China, India, Vietnam, Korea, Chinese Taipei, Turkey, Russian Federation, Brazil). Italy has three main strands of co-operation: China, France and the United States. ▪ China: co-operative activities concern procedures related to granting IPR and enforcement at the administrative and judicial levels in order to build confidence and improve bilateral economic relations. ▪ France: a bilateral Anti-Counterfeiting Committee was established in 2002 to monitor the counterfeiting and piracy phenomenon, co-ordinate national policies and elaborate communication programmes to improve public awareness. ▪ USA: organisation of joint workshops (*e.g.* joint judicial workshops on IP case-law; IPR communication workshops focusing on increasing consumer awareness). In the framework of the Ali-Invest Programme of the EU, seminars on IPR protection and enforcement (notably on patents and trademarks) have been organised in Argentina, Bolivia, Peru and Mexico. Italy is involved in joint customs operations with other EU Member States and third countries that act as transit States. Joint Customs Operations imply more accurate controls during specified periods on target consignments considered to be risky. The Mutual Assistance Agreement, recently signed between the Customs Agency and Chinese Customs, allows both administrations to ask for information in case of suspicious consignments.
Awareness	The High Commissioner is competent for the development of awareness campaigns. So far, several communication campaigns have been organised: ▪ The campaign carried out in 2006 by the Patent and Trademark Office, was aimed at promulgating messages on the damage done by counterfeiting to the economy, through a variety of communication instruments, in order to raise consciousness in consumers and lead to a change in public opinion about infringements. This campaign will be repeated in 2007. ▪ The Patent and Trademark Office has also organised specific training in schools targeting children from 6 to 15 years. It has prepared educational material on IPR, counterfeiting and piracy and has organised workshops for pupils and teachers. On the Patent and Trademark Office website, a section is specifically devoted to counterfeiting (www.uibm.gov.it/contraffazione). It provides information on the phenomenon from a legal and economic point of view, on the media campaign and on the initiative in the schools. It also provides links to the websites of all the main actors involved in combating counterfeiting.

Industry initiatives and co-operation	The Confederation of Italian Business (Confindustria) has been active both at national and European level to improve regulations against counterfeiting and piracy. It also participates in the enforcement effort. In 2005, Confindustria signed a Memorandum of Understanding on the enforcement of IPR infringement with the Customs Agency and with the financial police (Guardia di Finanza). Confindustria is currently preparing a package of measures ("Progetto competitività") aimed at supporting companies, particularly SMEs, at developing and protecting IPR. The "Progetto competitività" aims at encouraging the diffusion of a culture of IPR protection through the creation of a modern and effective system of IPR asset management, assuring rights holders a fair exploitation of their rights. Single seminars addressed to small entrepreneurs have already been organised by a number of industry associations. The industry association Indicam has a key role in combating counterfeiting and promoting the protection of IP rights. It acts as interface between industry and the different branches of Italian Public Administration (at central and local level), the media and the general public. It delivers an annual award, the "Indicam Award" to reward outstanding anti-counterfeiting performances by local and central public agencies and the media. Its 2005/2006 activities have included: ▪ Organising different awareness campaigns in main historic cities and touristic sites (Florence, Venice, Rome, Adriatic Riviera, etc.); ▪ Organising public forums on the most important current anti-counterfeiting issues (web/web auctions; international fluxes of counterfeiting; etc.); ▪ Running training courses for special/local police forces; ▪ Co-operating with the public sector (High Commissioner, Customs, Guardia di Finanza, etc.) on programmes and projects (*e.g.* the Italian-French anti-counterfeiting committee; the mission of the Italian government in China). The Italian Federation of the textile and fashion industry (Smi-Ati) and the China National Textile and Apparel Council (Cntac) signed a bilateral agreement aimed at improving the protection of IPR during a mission of the Italian Government to China, in September 2006. In 2007, Federlegno-Arredo (the Federation of Wood Furniture Cork and Furnishing Italian Industries) signed a co-operation agreement with the China National Furniture Association and a code of conduct with the China National Interior Decoration Association (in these, a section is devoted to the mutual recognition and protection of reciprocal IPR). A similar agreement has also been signed with the China Building Decoration Association.

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The template on Italy is based on information provided by the Italian government.

JAPAN

Institutional organisation	The legal, regulatory and enforcement framework pertaining to intellectual property is overseen by different government agencies in Japan. The Agency for Cultural Affairs (MEXT) covers copyrights and related rights; the Japan Patent Office (JPO) (METI) covers trademarks, patents and design. An Intellectual Property Strategy Headquarters (IPSH) has been created in the Cabinet Secretariat. It involves ministers dealing with IP issues and 10 experts from industrial and academic sectors. The IPSH develops and releases a yearly Strategic programme for IP. Individual items of the programme are assigned to specific ministries, with the IPSH overseeing the implementation of policies and measures and assessing progress (IPSH, 2005). In addition, a Conference on Measures against Counterfeits and Pirated Copies has been established within the Cabinet Secretariat at Director-General level in July 2004 to promote concerted efforts and adjust the policies of the ministries and agencies involved in IP protection. Meetings of the Conference ensure concerted efforts in the areas: overseas markets, border protection and the elaboration of domestic regulations (IPSH, 2005).
Policy developments	In 2002, Japan formulated an Intellectual Property Policy Outline to revitalise the Japanese economy through the exploitation of IP. The Basic Law on Intellectual Property was enacted in 2003 and established the Intellectual Property Strategy Headquarters (IPSH) (see above). The 2006 Intellectual Property Strategic Programme developed by the IPSH stipulates that Japan would: speed up the examination of patent applications; promote harmonisation of the patent system; and work towards an international treaty of non-proliferation of counterfeit and pirated goods. Japan is considering prohibiting the private importation and individual possession of counterfeits (IPSH, 2006*a*).
Legal and regulatory framework	Civil remedies are available to the plaintiff in the case of infringement of IPR. The plaintiff may seek an injunction, with an order for destruction of infringing goods and removal of facilities used to commit the infringement. Preliminary injunctions to prevent the infringement are also available. In case of negligent or intentional infringement, compensatory damages are available. Consequential damages can be claimed if damage has been done to the reputation of the brand. There are no punitive damages available under Japanese laws (Tanaka and Kumagai, 2006). Criminal penalties for infringing utility model rights, design rights, and trademark rights were increased following the amendment in June 2006 to the Customs Laws and Intellectual Property Laws (the Trademark Law, the Unfair Competition Prevention Law, the Patent Law, and the Design Law) (WTO, 2007). The penalty applied for infringement of patents, trademarks or designs is either imprisonment not exceeding 10 years or fines not exceeding JPY 10 million, or both; in the case of infringement by a corporation, fines can be higher, but could not exceed JPY 300 million. Given the amendment to the Copyright Law in December 2006 - coming into force in July 2007 - the limit for penalties in case of copyright infringement will also be raised to 10 years imprisonment (IPSH, 2006b). Amendments have recently been made to the Customs Tariff Law to help block imports of counterfeit and pirated goods (IPSH, 2005). Customs authorities can suspend the importation of goods *ex officio*, or following a request by the rights holder. To facilitate judicial proceedings, a system was introduced whereby the rights holders are notified of the name and of the address of the importer and consignor of the goods that are deemed to have the potential to infringe intellectual property rights. In addition, customs can provide a rights holder with samples of a product that was allegedly being infringed to ease the burden of proof on the rights holder. To help Japan Customs better identify infringements, the Customs Tariff Law and Customs Law were amended to enable Customs to seek an opinion from other government agencies and IPR experts. Following an amendment of the Customs Law and the IP Laws, exportation of IP-infringing goods is regarded as an infringement (since January 2007, for goods infringing trademarks, patent rights, industrial design rights and goods violating the Unfair Competition Prevention Law). With implementation of the amended Copyright Law in July 2007, the exportation of copyright infringing goods will also be prohibited.
Enforcement	In April 2005, the Intellectual Property (IP) High Court - a special branch - was established within the Tokyo High Court to better respond to the need for technical expertise and to ensure coherent and timely IP dispute settlements (JPO, 2006). It deals with cases before the Tokyo High Court that are related to intellectual property. Both the Osaka District Court and the Tokyo District Court have specialised divisions for hearing IP cases (Tanaka and Kumagai, 2006). Since July 2006, Japan Customs has strengthened the enforcement on infringing goods imported in small quantities, to act against the disguising of business imports: while it is illegal to import counterfeits for business purposes in Japan, the import of counterfeits for person use is not illegal.

Programme evaluation and measurement	The IPSH releases an annual Intellectual Property Strategic Programme on a "rolling plan" basis, allowing for better monitoring of progress and a quicker response to developments in the area of IPR. In the Strategic Programme, a section on achievements assesses the progress made in intellectual property policy.
International co-operation	Japan has been actively involved in bilateral and multilateral efforts to combat counterfeiting and piracy: ▪ In 2005, Japan promoted the necessity of establishing a new international legal framework that would combat counterfeiting and piracy more effectively at national and international levels. ▪ At the Japan-EU summit in 2004, a "Japan-EU Joint Initiative for Enforcement of IPRs in Asia" was adopted for the purpose of tackling counterfeiting and piracy in Asia. It was agreed to further promote this initiative at the 2005 and 2006 summits. ▪ Co-operation was also pursued with France at a Japan-France summit held in 2005. A "Declaration for New Japan-France Partnership" was adopted, which recognises the importance of promoting measures against counterfeiting in Asia (IPSH, 2005). ▪ In 2006, at bilateral level and under the framework of the Japan-United States economic dialogue (Sub-cabinet Economic Dialogue; the Regulatory Reform and Competitive Policy Initiative[117]), Japan and the United States agreed to continue strengthening co-operation in combating counterfeiting and piracy in the Asia Pacific region and around the world. Japan has also been involved in regional co-operation: ▪ At a Japan-China-Korea summit in 2004, it was agreed to reinforce co-operation among the three countries for the protection of IPR; this included enhancing co-operation between patent offices (JPO, 2005b). ▪ The JPO and the Agency for Cultural Affairs provide support to foreign countries/regions where counterfeiting and piracy problems are serious, notably through the training of customs and police officers and court officials (JPO, 2005b). ▪ The Japanese government has been promoting IPR protection in a number of multilateral forums, including the APEC Summit/Ministerial Meeting in 2003[118] and the Asia-Europe Meeting (ASEM) Summit in 2004. To facilitate information exchange, Japan Customs has strengthened co-operation with foreign customs administrations through bilateral agreements/arrangements on mutual assistance (with China, South Korea, the United States and other partners). A Japan-EC mutual assistance agreement has also been reached in substance. In addition, Japan Customs exchanges information on significant seizure cases via the WCO Customs Enforcement network (OECD, 2005).
Awareness	Japan has conducted many surveys on IP in order to ensure that effective steps are taken to combat counterfeiting and piracy. In 2004 and 2006, the Cabinet Office organised a special opinion survey on IP to assess whether consumers are aware that they could purchase counterfeit products and to know how much they would be willing to do so (CO, 2004 and CO, 2006). The Japan Patent Office has been conducting annual surveys on the losses caused by counterfeiting. The surveys indicate how Japanese firms have been affected by IP infringement and they assess damages (JPO, 2004*a* and JPO, 2005*a)*. Since 2005, the government of Japan has introduced a survey on IP infringement overseas on the request of Japanese companies (IPSH, 2006). The government has conducted public awareness raising campaigns using various media in 2006, such as posters, magazines, banner ads on Internet auction sites, leaflets. An "anti-counterfeiting campaign" is also conducted via TV spots. A special website has been created for the campaign.
Industry initiatives and co-operation	The industry based International Intellectual Property Protection Forum (IIPPF)[119] in Japan and the Japanese government have organised missions to China to meet with the central and local governments to promote increased efforts for combating counterfeiting; Japan notably proposed seminars on appraisals on how to distinguish counterfeits from genuine products and technical training courses for more effective enforcement (JPO, 2005*b*).

117. See www.mofa.go.jp/region/n-america/us/report0606.pdf.

118. The establishment of IPR Service Centers proposed by Japan and the Comprehensive Strategy on IPR in the APEC region were endorsed. For further information about IPR Service Centers, see www.apecipeg.org/servicecentres/default.asp.

119. The IIPPF was created in 2002 and acts as a cross-sector industry forum for companies and associations affected by the overseas infringement of IP rights. See www.iippf.jp/en/index.html.

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KOREA

Institutional organisation	In May 2004, the Korean Government formed the Council for the Intellectual Property Rights Protection Policy (IPRP) under the Office for Government Policy Co-ordination. The Council comprises 10 government bodies, including the Ministry of Justice, the Ministry of Foreign Affairs and Trade, the Ministry of Commerce, Industry and Energy, the Ministry of Culture and Tourism (MCT), the Korean Customs Service (KCS), the National Police Agency (NPA), the Korean Intellectual Property Office (KIPO), the Korean Food and Drug Administration (OGPC, 2004). The IPRP plans and co-ordinates IPR matters for the different government offices. It also periodically reviews the state of IPR protection with the relevant government offices (OGPC, 2004). KIPO is the main body responsible for granting and administering the industrial property rights. The administrative branches, namely KCS, NPA, and KIPO are actively involved in the enforcement effort. MCT is responsible for copyrights. Korea has specialised IP courts.
Policy developments	Korean Government efforts have focused on improving the legal and administrative infrastructures and educating the public (OGPC, 2004). The "Customs Modernisation Plan 2010" was adopted in 2005 and provides for improved enforcement (KCS, 2006).
Legal and regulatory framework	In Korea, IPRs are protected by 11 different acts, including the Trademark Act, the Patent Act, the Copyright Act, the Unfair Competition Prevention and Trade Secret Protection Act, the Computer Program Protection Act, the Customs Act, the Industrial Design Protection Act, the Sound Records, Video Products and Game Software Act, the Seed Industry Act, the Utility Model Act, and the Semiconductor Integrated Circuit Layout Design Act (KIPO, 2005). Legal action against counterfeit and piracy is based primarily on the following laws: the Trademark Act; the Unfair Competition Prevention and Trade Secret Protection Act; the Civil Law, and the Copyright Act. Under these laws, the manufacturing, selling, importing and exporting of counterfeit and pirated goods or works is considered as an IPR infringement and an act of unfair competition (KIPO, 2005). Under the Civil Law, a trademark rightsholder can claim compensation from any person who has intentionally or negligently infringed the IP right. In addition to civil remedies, those who violate a trademark right are subject to criminal penalties with possible prison sentences of up to seven years or a fine of up to a 100 million Korean won[120]. Furthermore, if a representative of a legal entity or an agent infringes a trademark right in relation to the business of the legal entity or a person, then the legal entity or the person, in addition to the offender, is subject to a fine of up to 300 million Korean won. The Court has the authority to order the forfeiture of the assets resulting from the counterfeiting of the trademark. The penalty for infringements involving illegal duplication and distribution without the consent of the copyright holder is up to five years in prison or a fine of up to 50 million Korean won, or both. The court can confiscate the counterfeit goods owned by a copyright infringer. The Unfair Competition Prevention and Trade Secret Protection Act also protects trademarks. Under this Act, those engaged in an act of unfair competition are subject to prison sentences to up to three years or a fine of up to 30 million Korean won. The Act also stipulates that KIPO and local governments can investigate acts of unfair competition and issue warnings to offenders.
Enforcement	Under the Law Enforcement Officials' Duty Act, Customs officers have the authority to investigate and arrest importers and exporters who trade in IPR-infringing goods. IPR infringement imports are suspended for clearance and seized using risk management systems, such as the Customs Data Warehouse (CDW), the Smuggling Alert system (SAS) and the Spider Web System (KCS, 2006). KCS has set up a division in charge of IPR related matters at its headquarters in November 2003, to tackle IPR infringements more effectively. Currently, Customs have 60 teams (114 officers) dealing with IPR enforcement, and two teams (10 officers) dealing more specifically with enforcement against online counterfeiting and piracy. A system called "Spider Web" is used to track down IPR infringing goods in real-time by utilising databases containing criminal records, clearance information and foreign currency transaction data. KIPO has recently established a "Counterfeiting Reporting Centre", where investigations are carried out on counterfeiting (www.kipo.go.kr/ippc). KIPO conducts joint investigation with the police, the district prosecutors office and local governments. Each year, around 250 local government official participate in this joint investigation. Also, under KIPO's guidelines and mandates, local governments can conduct initial administrative investigations. The Supreme Public Prosecutors Office also has the authority to investigate counterfeiters and distributors of counterfeit

120. 1 USD = 947 Korean Won (March, 2007).

	goods. The Joint Investigative Center on IPR Violations in the Supreme Public Prosecutor's Office and the Regional Joint Investigation Teams in 21 major district public prosecutor's offices conduct IPR investigations.
Programme evaluation and measurement	Since 2000, the Korean government has produced an annual report on anti-counterfeiting activities, covering results of crackdowns on counterfeit goods and IPR enforcement (KIPO, 2005).
International co-operation	Korea has been involved in various international forums, including ASEM, APEC and the Global Congress. In April 2006, the international conference on IPR was held in Seoul with participants from WIPO, WCO and business. The government has also collaborated with related international organisations, such as WTO, WCO and WIPO. The Korean Government has, for example, been involved in efforts regarding international information exchange, notably in: ▪ The Project Crocodile: a global information exchange system on tobacco among 16 customs administrations. ▪ The Customs Enforcement Network: WCO's electronic network for the exchange of investigative intelligence on drugs and fakes. KCS signed a Memorandum of Understanding (MOU) with the European Union Chamber of Commerce (EUCCK) in Korea in October 2000 to share IPR-related information. Under the MOU, the KCS and EUCCK exchange information concerning trademarks and import goods. MCT established a Fund-in-Trust in WIPO to promote the copyright protection environment in the Asia-Pacific region.
Awareness	The Korean government has focused its public awareness-raising efforts on the Internet: ▪ In 2006, KCS set up the Cyber Intellectual Property Protection Centre (IPPC, http://iprcenter.customs.go.kr/) in order to pursue public campaigns online and to provide information. Consumers can report products suspicious of IPR infringement to the IPPC centre. ▪ Also, KCS has opened a unique website called Cyber Exhibition of Counterfeit and Genuine Goods (http://fake-expo.customs.go.kr/) which provides the general public with information on how to distinguish counterfeit from original items. Since 2000, the Exhibition of Counterfeits and Genuine Goods has been held annually with attendance from around 50 domestic companies and other international brands. KIPO and KCS have introduced an “Anti-Counterfeiting Rewards System” to raise enthusiasm for combating counterfeiting and piracy. It plans to offer rewards to organisations or individuals with an excellent record in cracking down on infringing goods (KIPO, 2005). In addition, KIPO produces and disseminates brochures, leaflets, video tapes and other informational material on counterfeiting. It also conducts campaigns on electronic signboards in major cities in order to encourage the boycott of counterfeit goods. In 2006, MCT began to educate teenagers about copyrights by publishing a comic book and running so called “Copyright Protection Model Schools” nationwide.
Industry initiatives and co-operation	Korean industries are at the eve of forming a coalition of firms and associations to combat counterfeiting and piracy internationally. The Korea International Trade Association (KITA), together with MOICE, has established a centre called “Anti-Counterfeiting Center for Korean Exports” (www.kita.net/stopfake). Industries that are particularly affected by counterfeiting and piracy -- the automotive and electronics industries, for example -- are currently working on strategies and action plans to combat the phenomenon. The Korean electronics manufacturers (grouped under the Electronic Industries Association of Korea (EIAK)) are also joining forces to minimise the damages for domestic companies (www.ipac.or.kr/).

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RUSSIA

Institutional organisation	In Russia several entities are responsible for IP policy formulation and implementation. IP legislation is formulated within the Ministry of Justice and the Ministry of Internal Affairs of the Russian Federation, in consultation with the Executive Office of the President. The Federal Service for Intellectual Property, Patents and Trademarks (Rospatent), under the Ministry of Education and Science, ensures legal protection for intellectual property including patents and trademarks. The main tasks of Rospatent are: ▪ To control and examine applications for IP rights; and ▪ To establish and register the intellectual property rights according to the legislation of the Russian Federation. The Department for Economic Security of the Ministry of Internal Affairs has a special division to combat intellectual property crime. In addition to the above listed units, in 2002 the Government Commission to Counter Intellectual Property Infringements was set up to facilitate the process of decision-making and to co-ordinate and improve legislation. In 2004, the national Duma (lower house of the Russian parliament) set up an Expert Committee on legal regulation and protection of intellectual property to channel efforts by government and industry into formulating effective measures to protect IP rights.
Policy	IPR issues are a priority for the Russian government. In recent years, the emphasis has been on the establishment of a sound system of IP protection that complies with the international standards, and on increased co-operation between the imposing and enforcing bodies.
Legal and regulatory framework	In recent decades, Russia has worked to bring its IP legislation in line with international legal standards. In the early 1990s, Russia became a signatory to most treaties including the general treaties, IP Protection treaties, Global Protection System-related treaties and Classification-related treaties.[121] It also became a member of the World Intellectual Property Organization (WIPO). The major change made to bring legislation in line with WTO standards was the adoption of Part IV of the Civil Code by the Duma (lower house of the Russian parliament). Part IV introduces a single law replacing most of Russia's IPR legislation. Russia has also committed to introducing legislation related to its data-protection regime, which would protect, *inter alia*, undisclosed information (such as test data) submitted to obtain marketing approval of pharmaceuticals. The Russian Trademark Law is found in the Law of the Russian Federation #3520-1 on Trademarks, Service Marks and Appellations of Origin of Goods. A brand or trademark is not protected in Russia unless the brand owner complies with the state registration law. This standard is in accordance with trademark law worldwide. If a brand owner applies for, and fulfils the registration requirements of the law, the owner can acquire a proprietary right to the brand. Both foreign and domestic brand owners must comply with the same law. The rights of the trademark or brand will apply at the time of completion of the registration process, and a certificate of registration will be issued. Thereupon, the rights holder will have the exclusive right of use for the trademark and the legal power to exclude others from use of the mark with respect to the goods listed in the certificate. Anyone else using the mark on the same or similar goods thereafter is an infringer, if the use occurs in the territory of the Russian Federation. The duration of the right is 10 years from the filing, but the vested right lapses if the mark is not used for three consecutive years following issuance of the certificate of ownership. In addition, the mark must be used at least once every three years thereafter. Otherwise, the brand is terminable. The Russian Law of Copyright and Related Rights as amended 20 July 2004 and certain international agreements, such as the Berne Convention, govern intellectual property rights for copyrightable works in the territory of the Russian Federation. The Patent Law of The Russian Federation is a comprehensive law. The law provides legal protection for the creations or authors of inventions, utility models and industrial designs. The document certifying or evidencing title to the creation is a patent. The patent, therefore, is the title deed to the creation. The title document, which is the patent, describes the invention, utility model or industrial design, the date of authorship to certify the priority date of the patent, and the name or identity of the author and patentee. Upon issuance of the patent, the author acquires an exclusive set of proprietary rights. The duration of these rights will be 20 years for inventions, 10 years for industrial designs and five years for utility models.

121. For a complete list of IP-related treaties ratified by Russian Federation, go to: www.wipo.int/treaties/en/

Enforcement	In Russia, the enforcement of IP laws is co-ordinated by the Russian Ministry of Internal Affairs. The Department for Economic Security was established in March 1999 within the Ministry for the purpose of combating intellectual property crime in Russia. Equivalent entities were created in all administrative subjects of the Russian Federation. Criminal procedures have been reinforced by an amendment to Article 151 of the Russian Federation Code of Criminal Procedure. Article 146 provides for investigators from the Public Prosecutors; the amendment to Article 151 provides for additional investigators from the body that has identified the offence. As a signatory to the European Partnership Agreement (EPA), Russia is committed to adopting a level of [IPR] protection similar to that existing in the European Community, including effective means of enforcing such rights. Some initial measures have been taken to strengthen IPR enforcement, and further efforts are being made to meet the international standards as described by the EPA (European Commission, 2006). The issue of Russian IP rights enforcement was also discussed during the bilateral negotiations between Russia and the US on WTO accession (USTR, 2006). Russian authorities aim to step up efforts to effectively enforce IPR. Authorities are committed to increase resources devoted to enforcement, to improve the training of enforcement officials, and to strengthen border enforcement. Russia is also committed to improving enforcement action against Russia-based websites that permit the illegal distribution of music and other copyrighted works and to strengthen the regulation of optical media plants in order to close down production of optical media containing pirated and counterfeit material.
Programme evaluation	Activities aimed at protecting the consumer market from counterfeit and pirated products are monitored by the relevant authorities and reported to the President of the Russian Federation.
International co-operation	Russia has been an active participant in various international forums dealing with counterfeiting and piracy, including the G-8 and WIPO.
Public awareness	Rospatent has established the Russian State Educational Institute for Intellectual Property (RGIIS). The Institute offers courses, seminars and workshops, as well as expert advice and information.
Industry initiatives and co-operation	In Russia, the major industry initiative that acts for the IPR protection is the Coalition for Intellectual Property Rights (CIPR). CIPR is an industry initiative that aims at rising awareness, supporting development of IPR legislation and promoting IP rights enforcement.

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SWITZERLAND

Institutional organisation	The Swiss Federal Institute of Intellectual Property (the Institute) is Switzerland's registration office for industrial property rights. It is also the governmental agency competent for all matters relating to intellectual property and it formulates IP policy. As a legal entity in its own right, the Institute is financially and operatively autonomous. When acting as the government agency competent for intellectual property policy formulation and implementation, the Institute is supervised by, and reports to, the Federal Council (Swiss government). Activities of the Institute include the preparation and implementation of legislative instruments in the field of IPR. It is also involved in the implementation of international treaties, the representation of Switzerland within the framework of international organisations and conventions, and participation in technical co-operation in the field of IPR. Other governmental agencies involved in the protection of IPR are among others: the Federal Customs Administration; the Federal Office for Police, the Federal Office of Consumer Affairs; and the State Secretariat for Economic Affairs (SECO). As part of the Swiss Anti-Counterfeiting and Piracy Platform (see below), a "public" contact point has been set up at the Institute to co-ordinate governmental agencies involved in combating counterfeiting and piracy.
Policy developments	The Swiss Parliament is currently debating proposals for amendments to various parts of Swiss IP legislation, in order to facilitate the fight against counterfeiting and piracy. These include: ▪ Strengthening the penalties for infringements on a commercial scale; ▪ Expanding border measures to allow customs authorities to seize infringing goods in transit; ▪ Providing a simplified destruction procedure for infringing goods; ▪ Allowing the seizure of infringing goods imported or exported for private purposes. Furthermore, in November 2006, the Federal Council initiated public consultation regarding a federal patent court law and a patent attorney law. These laws aim to improve the legal protection and the advisory services in patent matters to strengthen Switzerland as place of innovation. Together with the private sector, the Institute has initiated the Swiss Anti-Counterfeiting and Piracy Platform (STOP PIRACY), a public private partnership to fight counterfeiting and piracy.
Legal and regulatory framework	In Switzerland, IP rights are notably protected by the 1954 Federal Law on Patents for Inventions, the 1992 Federal Law on the Protection of Trademarks and Indications of Source, the 2002 Design Law and the 1992 Federal Law on Copyright and Neighbouring rights. Swiss IP laws provide both civil and criminal sanctions in case of IPR infringement. Civil sanctions generally include: ▪ Action for declaratory judgment; ▪ Action for execution, including proceedings for damages and redress and surrender of profits; ▪ Confiscation; ▪ Precautionary measures; ▪ Publication of judgment. Criminal sanctions generally include: ▪ Imprisonment for a term not exceeding one year or a fine of up to CHF 100 000 for infringement; or, ▪ Imprisonment up to three years and a fine of up to CHF 100.000 for infringements on a commercial scale. ▪ Due to the revision of the general parts of the Swiss Criminal Code, fines for criminal sanctions have been increased de facto; fines can now reach up to CHF 1 080 000 (the amount depends on the income of the sanctioned person). Administrative measures include border measures, such as the suspension of release of infringing goods by the customs authorities.
Enforcement	Enforcement mechanisms to combat infringements are administrative procedures undertaken by the police, judicial procedures (civil and criminal) and customs procedures; currently these are not available for patents. Civil and criminal enforcement procedures in Switzerland are governed mainly by procedural laws of the Cantons, by

	the Federal Law on Jurisdiction and the Federal Law on the Organisation of the Judicial System, unless the federal intellectual property laws contain specific provisions for the enforcement of IPRs. Decisions concerning the civil and criminal enforcement of IPRs are made, in the first instance, by the Swiss cantonal courts. Decisions can be appealed to the Supreme Federal Court. The creation of a specialised first instance patent tribunal for civil procedures is currently under discussion in the context of the revision of the patent law. As counterfeit and pirated goods are mainly imported into Switzerland, the number of border controls (especially at airports) has been increased. Customs can act on the request of the rights holders, but can also seize goods *ex officio*. In practice, Swiss customs, however, rarely act on their own initiative. Switzerland plans to extend the provisions relating to border measures in the ongoing revision of the patent law. This would allow making customs provisions available for patents. Customs would also be able not only to check imports and exports, but also goods in transit suspected of infringing a trademark, a design or a copyright. In addition, the possibility for customs to seize small quantities of counterfeit products of a non-commercial nature infringing a trademark or a design is under discussion.
Programme evaluation and measurement	The Federal Customs Administration publishes statistics about counterfeiting and piracy every year (see www.stop-piracy.ch/en/candp/cap20.shtm).
International co-operation	As a member of EFTA, Switzerland has concluded a series of free-trade agreements with other countries. Switzerland and other EFTA Member States assist their trading partners in their national enforcement strategies through technical co-operation, by improving awareness and education and providing practical training in the field of intellectual property rights, particularly for customs and police officials. In addition to the free-trade agreements within the EFTA, Switzerland has concluded numerous Trade and Economic Co-operation Agreements (TECA) and Free-Trade Agreements (FTA) with third countries. Those agreements cover IP among other disciplines. Besides, an agreement between the Swiss government and the government of the Socialist Republic of Vietnam on the protection of intellectual property and on co-operation in the field of intellectual property was concluded in 1999. In the last three years, particular emphasis has been put on enforcement. The Institute has led three training sessions of two weeks each for representatives from the Vietnamese police, custom authorities, market police and anti-counterfeiting forces in Switzerland.
Awareness	To fight counterfeiting and piracy, the Federal Institute of Intellectual Property combined forces with the ICC Switzerland (Swiss National Committee of the International Chamber of Commerce) to create the Swiss Anti-Counterfeiting and Piracy Platform in July 2005. Activities are varied and range from building awareness among the broad public to training governmental agencies, courts and businesses. Awareness-raising activities have included: ▪ An awareness campaign (see www.stop-piracy.ch/en/news/n10.shtm) ▪ A website: www.stop-piracy.ch ▪ Posters all over Switzerland ▪ Flyers, t-shirts and banners on several websites (like eBay Switzerland) ▪ Presence at several fairs. In addition, counterfeiting and piracy contact points (one for public and one for private users) have been created. In 2004, the Federal Institute of Intellectual Property organised a survey of Swiss companies to assess the size and impact of counterfeiting and piracy (see www.ige.ch/E/jurinfo/documents/j10711e.pdf).
Industry initiatives and co-operation	Numerous industry branches are involved in the Swiss Anti-Counterfeiting and Piracy Platform (see www.stop-piracy.ch/en/about/a30.shtm). Sectors where trademark and patented products are involved include the watch industry, and the pharmaceutical, machine, food, textile and cigarette branches; those where copyrighted material is at issue include music, film and software producers. Through this Platform, industry exchanges information and best practice on counterfeiting and piracy issues, and it supports public awareness-raising campaigns. The platform also allows for improved co-ordination between industry and government.

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The template on Switzerland is based on information provided by the Swiss Federal Institute of Intellectual Property.

CHINESE TAIPEI

Institutional organisation	Overall co-ordination of IPR activities in Chinese Taipei is carried out by an interagency "Co-ordination Task Force for IP Enforcement", created in 2003, which is chaired by the Prime Minister and situated at the Ministry of Economic Affairs (MOEA). The Task Force, comprising eight government bodies[122], meets frequently to review IP policies and strengthen inter-agency communications and co-ordination. Within the group, the Intellectual Property Office of the Ministry of Economic Affairs (TIPO) is responsible for IP registration, formulating IPR enforcement policy and promoting public awareness (TIPO, 2004 and WTO, 2006). The MOEA is responsible for the IPR police force. It has created the Joint Optical Disk Enforcement taskforce (JODE) to carry out raids and seizures of manufacturing devices, raw materials and products of illegal plants.
Policy developments	Chinese Taipei has modified its legislation and practice in conformity with the WTO TRIPS Agreement. This has been pursued through the "2002 IPR Action Year" and "IPR Action Plan 2003-2005". Initiatives have largely concerned fulfilling international responsibility by increasing IPR protection, strengthening government IPR enforcement mechanisms and amending related IPR laws such as trademarks, patent and copyright laws. (TIPO Annual Report, 2005). A new "IPR Action Plan 2006-2008" aims to strengthen Internet infringement prevention, reinforce IPR protection on campuses and provide guidance for the establishment of a copyright licensing system. In response to Internet crimes, the government introduced an Implementation Plan for Strengthening Preventive Measures Against Internet Infringements in 2005. Chinese Taipei enacted legislation in March establishing an IP Court at the end of 2007.
Legal and regulatory framework	All IP laws contain provisions on remedies in case of infringement. Rights holders may take legal actions based on civil, administrative or criminal codes. Under the Patent Act, the amount of reimbursement due to patent damage may be calculated on the basis of the Civil Code or on the basis of the profits earned by the infringer. The latest amended Patent Act, which entered into force in July 2004, allows the Judiciary to designate organisations with expertise in determining patent infringements to assist judges and prosecutors (WTO, 2006). In the case of civil penalties for infringement of a registered trademark, the violator shall be charged with imprisonment for no more than three years and/or a fine of no more than NT$200 000[123]. Any person, who knowingly sells, displays for sale, exports or imports the counterfeiting goods shall be charged with imprisonment of no more than one year and/or a fine of no more than NT$50 000. The latest amended Trademark Act 2003 broadened trademark protection to include goods "likely to cause confusion"; it also added protection for three-dimensional trademarks, colour trademarks and sound trademarks (WTO, 2006). The Copyright Act was amended in 2003, 2004 and 2006. In the 2003 amendment, public transmission and distribution rights were added and provisions for criminal sanction in the selling and production of pirated optical disks were stipulated. Regarding civil remedies, the amount of statutory compensation was increased from NT$1 million to NT$5 million for infringement ruled as serious in nature. In the case of criminal penalties, the fines can increase up to NT$8 million. The 2004 Copyright amendments provided clarification on exclusive rights and the use and protection of copyrights in the context of the current digital environment. The provisions impose heavier penalties for the manufacture, distribution and sale of pirated optical disks. In 2006, the Copyright Act was amended to comply with the Criminal Code revisions.
Enforcement	The government provides training courses to judges, prosecutors, police officers and Customs officials. In 2005, the Taiwan IP Training Academy (TIPA) was established by MOEA. It is associated with universities, training organisations and private enterprises, and it aims to train IP professionals through the sponsorship of courses and workshops. In 2005, TIPA compiled training texts and selected IP professionals to provide education to industries with respect to efficient IPR management (TIPO Annual Report, 2005) To increase the effectiveness of enforcement, the government provides awards to informants and law enforcement personnel upon the seizure of IPR infringing products. The government provides rewards of up to NT$10 million for a tip-off that leads to a successful crackdown on illegal optical disk plants and NT$500,000 for discovery of illegal optical disk

122. The Co-ordination Task Force for IP Enforcement comprises eight government bodies including Executive Yuan, Fair Trade Committee, Ministry of Justice, Government Information Office, Ministry of Finance, Ministry of Interior, Ministry of Education and Ministry of Economic Affairs, www.tipo.gov.tw/eng/prosecution/apjl.asp.

123. 1 USD = 33 NT$ (February 2007).

	burners. In 2005, a total of NT$17,012,883 was granted (TIPO Annual Report, 2005). According to TIPO's preliminary statistics, awards granted in 2006 amounted to NT$ 23 million. In the case of judicial proceedings, prosecutors may act *ex officio* in case of trademark infringement. In the case of optical disk piracy deemed to violate the Copyright Law, the prosecutor's office may initiate a public prosecution (WTO, 2006). Customs may suspend *ex officio* the release of goods suspected of infringing IPR regulations. Cargos that are declared for import/export, delivered by parcel post, or carried by inward/outward passengers will be confiscated by Customs if infringements of patent rights, trademark rights, or copyrights are found. The offender can be fined one to three times the value of the goods. The IPR police force continues to strengthen enforcement in traditional markets (*i.e.* night markets, side walk vendors, etc.) and the Internet. In 2005, The IPR police uncovered a significant increase of Internet infringements compared to 2004 (TIPO Annual Report, 2005).
Programme evaluation and measurement	The Government prepares quarterly and annual reports on IP protection that review developments in key policy areas and report on enforcement initiatives (www.tipo.gov.tw). A cross-departmental meeting, chaired by the Prime Minister, continues to be held quarterly to address key IPR issues and to review the effectiveness of the Co-ordination Task Force for IP Enforcement.
International co-operation	Apart from WTO/TRIPS, Chinese Taipei ensures co-operation on, and protection of, IPR within the framework of APEC. Chinese Taipei is not a signatory to any conventions of the World Intellectual Property Organization, but it has sought to implement cross-border IP protection requirements and obligations through bilateral arrangements and co-operation with major trading partners, such as Australia, New Zealand and the United States (WTO, 2006).
Awareness	To boost public awareness, since 2002 the government has sponsored seminars, television and cinema commercials and public displays (train stations and airports), large outdoor promotions and concerts, and a series of television and radio shows. To help build understanding of, and respect for, IPR from a young age, the Ministry of Education requires that all levels of schooling incorporate concepts of IPR protection into their curriculum. Furthermore, the TIPO published on-line education and entertainment programmes, distinguished by elementary, junior and high school levels, to promote and enforce IPR protection (www.tipo.gov.tw/copyright/copyright_act/copyright_act_2006.asp).
Industry initiatives and co-operation	The government and major international rights holder groups jointly host IPR awareness activities, seminars, workshops and international conferences. Industry works with the government to provide knowledge and assistance in conducting investigations into IPR infringements.

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UNITED KINGDOM

Institutional organisation	The UK Intellectual Property Office (IPO), under the aegis of the Department of Trade and Industry, is responsible for the national framework of intellectual property rights comprising patents, designs, trademarks and copyright. Responsibility for policy development in the IPO rests with the Intellectual Property and Innovation Directorate (IPID). www.patent.gov.uk/
Policy developments	The UK National IP Crime Strategy launched in 2004 aims to deliver better-targeted enforcement action. The National IP Crime Group (IPCG), whose members represent government, enforcement authorities and industry bodies, was set up by the IPO in 2005 to steer the work. Priority areas include improved intelligence to better target enforcement work and improvements to the enforcement framework nationally and internationally. The authorities have also made the recovery of criminal proceeds a priority. The review of the UK intellectual property system (the Gowers Review) was published on 6 December 2006. The principal recommendations of the review were aimed at: *1)* tackling IP crime and ensuring that rights are well enforced; *2)* reducing the costs and complexity of the system; and *3)* reforming the copyright law to allow individuals and institutions to use content in ways that are consistent with the digital age. The IPO has published a timetable for the implementation of the Gowers Review recommendations. www.patent.gov.uk/policy/policy-issues/policy-issues-gowers.htm
Legal and regulatory framework	The new law, Copyright and Trade Marks (Offences and Enforcement) Act 2002, amends provisions in the Copyright, Designs and Patents Act of 1988 and the Trade Marks Act of 1994. It raises the maximum penalty for the offences of sale or hire or dealing in material infringing copyright from two to ten years and an unlimited fine. The 1977 Patents Act was modified by the Patents Act 2004, which came into force on 1 October 2005. The Act makes some changes to help with patent enforcement and the resolution of disputes over patents. The Intellectual Property Regulations 2006, which came into force on 29 April 2006, implement the European Directive (2004/48/EC), which provides a harmonised approach to the enforcement of civil measures for IP rights. Although intellectual property laws apply equally in England and Wales, Scotland and Northern Ireland, there are separate legal procedures in Scotland and Northern Ireland. UK laws cover both civil and criminal actions. Action to enforce intellectual property rights is by way of civil proceedings and by criminal proceedings. There are separate court systems in the UK for England and Wales, and Scotland and Northern Ireland. Whilst there are specialised IP courts in England and Wales, there are none in Scotland and Northern Ireland. In England and Wales, the High Court (Patents Court) has exclusive jurisdiction to hear intellectual property infringement proceedings. A specialist Patents County Court is designed to provide a quick and cost-effective alternative to High Court litigation. The decision whether to commence criminal proceedings rests initially with the enforcement authority (the Crown Prosecution Service, Trading Standards), although private prosecutions are also possible. Criminal proceedings and prosecution begin in the magistrate courts.
Enforcement	Enforcement within the UK is generally carried out by local authorities. The local Trading Standards Authorities investigate and prosecute those who trade in counterfeit and pirated items. Under the Proceeds of Crime Act 2002 (POCA), they have the power to recover money which has been obtained illegally, and since 1 April 2006 they have had access to a proportion -- 50% -- of the recovered assets from POCA awards made in connection with IP crime prosecutions. Recovery of criminal proceeds is also undertaken by the Assets Recovery Agency (ARA) and the new Serious Organised Crime Agency (SOCA). The ARA, created in 2003, is a non-ministerial Department established under the Proceeds of the Crime Act 2002 and reports directly to the Home Secretary. The Agency performs Civil Recovery and Criminal Confiscation roles in England, Wales and Northern Ireland. In addition to its powers to initiate and pursue Criminal confiscation proceedings, it has unique powers to sue in the High Court to recover unlawfully acquired assets. It has undertaken a wide range of cases in both civil recovery and criminal confiscation in areas of alleged criminality, including counterfeit goods. The SOCA became operational on 1 April 2006 and was established under the Serious Organised Crime and Police Bill. Efforts devoted to organised crime include counterfeiting. There are plans to merge the Assets Recovery Agency with the Serious Organised Crime Agency, and to extend prosecutors' power to launch civil recovery action under the Proceeds of Crime Act 2002. The Serious and Organised Crime Agency has recently developed a specific programme to tackle IP crime. The IPO is a member of the Steering Board.

	In Northern Ireland, the creation in 2000 of both the Organised Crime Task Force (OCTF) to develop a co-ordinated multi-agency approach for addressing the growing problem of organised crime, as well as the Police Service (PSNI), has helped law enforcement agencies in Northern Ireland to seize a vast amount of counterfeit products. HM Revenue & Customs have extensive powers to investigate and seize goods suspected of infringing IP rights, chiefly under the EC Border Regulation (1383/2003). Customs has a dedicated IP unit based at Southend-on-Sea that notifies all regional detecting offices and frontier stations of all IPR applications in force and sets national profiles in response to intelligence. As a result of the Gowers Review of Intellectual property from 6 April 2007, new powers under the Copyright, Designs and Patents Act, backed up with £5million in new funding, will be at the disposal of Trading Standards Officers and other UK enforcement agencies. Bringing into force Section 107a of the Copyright, Designs and Patents Act (CDPA) 1988 was a recommendation by last year's Gowers Review of Intellectual Property. It will make enforcement of copyright infringement the responsibility of Trading Standards and give enforcement officers the power to make test purchases, enter premises and inspect and seize goods and documents. To support the national crime strategy, the IPO has developed a National Intellectual Property Intelligence System (Tellpat). The database collects the intelligence gathered by industry and enforcement agencies, to track illegal IP activities. A new police unit created in February 2006 dedicated to combating film piracy and the organised criminal networks sustaining the manufacture and distribution of counterfeit film product was launched by the Metropolitan Police's Economic and Specialist Crime Command, in partnership with the Federation Against Copyright Theft (FACT).
Programme evaluation and measurement	In 2005, the IPO produced the first National Intellectual Property Enforcement Report, which provided an assessment of the scope and scale of IP crime during 2004 and the enforcement work carried out by government and enforcement and industry bodies involved in combating counterfeiting and piracy. A second Enforcement report issued in 2006 reports that early indications of the government's new enforcement strategy have been positive in those industry sectors where co-operation between enforcement bodies and industry bodies has been strong.
International co-operation	The IPO: ▪ Co-chairs the UN Economic and Social Advisory Group on Protection of IP rights (UNECE), which is an international partnership between government and industry; ▪ As a member of the Interpol IP Action Group has helped to develop an Investigators Guide and construct a key contacts database for enforcers; ▪ Is actively involved in the work undertaken by the G8 IPR experts; ▪ Provides training and awareness programmes around the world, including in China, Russia, Kazakhstan, Latvia and Bulgaria; ▪ Signed a Memorandum of Understanding with the US Patent and Trade Marks Office (USPTO) in 2005 to develop joint training programmes; ▪ Is a member of the Commission's Peer Review team assessing member states' and candidate countries' IP and enforcement regimes. HM Revenue and Customs: ▪ Co-operates globally with brands owners and enforcement authorities, including the Chinese Customs; ▪ Offers training to customs offices overseas.
Awareness	The IPO developed the Think kit® as an IP educational tool for schools. It is designed to generate interest and understanding of IP and creativity amongst school children. www.patent.gov.uk/education/education-school/education-thinkkit.htm
Industry initiatives and co-operation	Brand owners work closely with local trading standards officers to fight counterfeiting and piracy. An example is the Federation Against Copyright Theft (FACT, which works closely across the UK with Police services, Trading Standards, HM Revenue & Customs). www.fact-uk.org.uk/index.htm. Several raids and substantial seizures were reported in 2005 and 2006. Details are provided on its website. Other UK-based associations also work to protect intellectual property rights and increase public awareness including: The Alliance Against Intellectual Property (IP) Theft www.allianceagainstiptheft.co.uk/ The Anti-Counterfeiting Group (ACG) in the UK www.a-cg.com/ The *Piracy is a Crime* campaign www.piracyisacrime.com/

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UNITED STATES

Institutional organisation	The US Patent and Trademark Office grants and administers patents and trademarks. The US Copyright Office is responsible for registering copyright claims. The National Intellectual Property Law Enforcement Coordination Council (NIPLECC)[124], established in 1999, brings together the key operational entities within the federal government that are responsible for IP enforcement, and it is responsible for co-ordinating intellectual property enforcement activities. The Office of the US Coordinator for International Intellectual Property Enforcement, established in 2005, promotes enforcement of intellectual property rights. Under the leadership of the White House, the Coordinator's Office leads interagency initiatives, such as the Strategy Targeting Organized Piracy (STOP!), and outreach with the private sector and international partners.
Policy developments	The STOP! initiative[125], announced in October 2004, is led by the White House and brings together the members of the NIPLECC, the Department of Agriculture, and the Food and Drug Administration. The STOP! initiative, through active co-operation with US Industry, focuses on *1)* empowering American innovators to better protect their rights at home and abroad, *2*) pursuing criminal enterprises involved in piracy and counterfeiting, *3)* increasing efforts to block counterfeit and pirated goods at borders, and *4)* engaging trading partners in efforts to combat global counterfeiting and piracy.
Legal and regulatory framework	Copyrights are protected by federal law under the Copyright Act of 1976, as amended. The Copyright Office is the registry of claims to copyright, and administers the mandatory deposit provisions of the copyright law and the various compulsory licensing provisions of the law. Additionally, the Copyright Office and the Library of Congress administer the Copyright Arbitration Royalty Panels (CARPs), which meet to adjust rates and distribute royalties for statutory and compulsory licences. The United States grants automatic protection to copyrighted works, including software, from all WTO Members, Berne Convention signatories, and others (WTO, 2006). In the case of copyright infringement, the Copyright Act provides for both civil remedies and criminal prosecution. Civil remedies may take the form of both preliminary and permanent injunctions against copyright infringement and against violations of the author's rights of attribution and integrity in works of visual art; they may also take the form of actual damages suffered by the copyright owner and any additional profits of the infringer, or of statuary damages.[126] Criminal penalties for copyright infringement include: (for the first offence) imprisonment for not more than five years, or a fine of not more than USD 500 000 or, both, and (for the second or subsequent offences) a fine of not more than USD 1 million, or imprisonment for not more than 10 years, or both.[127] Protection of trademarks in the United States arises from the actual use of the mark. Federal registration is not required but grants the holder additional rights, such as the legal presumption of ownership and the entitlement to use the mark in connection with the goods or services identified in the registration. Federal registration of marks, which includes trademarks, service marks, collective marks, and certification marks, is governed by the Trademark Act of 1946, as amended, and its implementing regulations (WTO, 2006). Unlike copyrights, trademarks can be protected from infringement indefinitely as long as they are in continuous use. Trademark law in the United States is enforced entirely through private lawsuits in either state or federal civil courts, and the trademark owner is therefore the sole party responsible for restricting infringing use of trademarks. Criminal penalties for intentional trafficking of goods with counterfeit marks, or attempts hereof, include: for the first offence, imprisonment for not more than 10 years, or a fine of not more than USD 2 million, or both; and for the second or subsequent offences, imprisonment of not more than 20 years, or a fine of not more than USD 5 million.[128]

124. The Council includes: the Office of the U.S. Trade Representative; the Department of Commerce (including the US Patent and Trademark Office and the International Trade Administration); the Department of Homeland Security (which includes US Customs and Border Protection and US Immigration and Customs Enforcement); the Department of Justice; and the State Department. The US Copyright Office serves in an advisory capacity.

125. STOP has five main priority areas: *1)* empower American innovators to better protect their rights in the United States and abroad; *2)* increase efforts to seize counterfeit goods at borders; *3)* pursue criminal enterprises involved in piracy and counterfeiting; *4)* work closely and creatively with industry; *5)* engage trading partners to join efforts.

126. United States Code, Title 17 (Copyrights), §504

127. United States Code, Title 17 (Copyrights), §1204

128. United States Code, Title 18 (Crimes and Criminal Procedure), §2320

Patents are granted by the United States Patent and Trademark Office (USPTO), using the first-to-invent rule; the United States is the only WTO Member to use this rule (WTO, 2006).

In the case of the unauthorised use of a patent, the US Patent Law provides for civil remedies through injunction or damages. The damages awarded to the patent holder must correspond to an adequate compensation for the infringement, but in no event less than a reasonable royalty for the infringer's use of the patent, together with interests and costs fixed by the court.[129]

Enforcement

The United States Department of Justice pursues a three-front approach to ensure effective prosecution in the case of IPR infringement. The three main components are:

- The Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) provides a core team of expert intellectual property prosecutors who investigate, prosecute, and co-ordinate national and international cases of intellectual property theft. These specialists furthermore help to develop and execute the Department's overall intellectual property enforcement strategy, as well as provide training and around-the- clock support to Assistant US Attorneys nationally. CCIPS has also developed a manual and training tool on prosecuting IP crimes.
- The Justice Department has designated at least one Computer Hacking and Intellectual Property (CHIP) Co-ordinator in every U.S. Attorney's Office in the country.[130] This network of Co-ordinators consists of Assistant US Attorneys with specialised training in prosecuting IP and computer crime; the individual co-ordinators serve as subject-matter experts within their districts.
- CHIP Units are strategically located in districts that experience a higher incidence of intellectual property and cyber-crime, or where such crimes have the largest economic impact. These units focus on prosecuting intellectual property offences, such as trademark violations, copyright infringement, and thefts of trade secrets. CHIP Unit attorneys are also actively involved in the regional training of other prosecutors and federal agents, and they work closely with victims of IP theft and cyber-crime on prevention efforts.[131]

Regarding border measures, the Department of Homeland Security, Customs and Border Protection (CBP) has diversified its approaches to IPR enforcement to include new techniques that complement traditional enforcement methods, such as implementing its IPR risk model, applying statistical analysis techniques and external information to the assessment of IPR risk. CBP has also included IPR audits in its national audit plan and trained a new group of employees, its regulatory auditors, on IPR to enable them to apply their auditing skills to the enforcement of intellectual property rights.

The Office of Enforcement, under the United States Patent and Trademark Office, undertakes a number of enforcement-related activities. The office:

- Consults with foreign governments and other United States Government agencies on IPR enforcement laws, including legal and judicial regimes, civil and criminal procedures, border measures, and administrative regulations.
- Gathers information on and monitors foreign national enforcement systems, and is active in co-ordinating enforcement-related activities undertaken by international, intergovernmental, regional, and non-governmental organisations.
- Advises the Office of the US Trade Representative (USTR) and the Department of Commerce (DOC) on the trade-related aspects of IPR enforcement and provides technical expertise and advice on enforcement provisions.
- Develops, co-ordinates, conducts and participates in training programmes, conferences, and seminars. The office also develops training materials to improve the level of expertise of those responsible for the enforcement of intellectual property rights.

129. United States Code, Title 35 (Patents), §283

130 Primary responsibility for prosecution of intellectual property offences (and federal crimes generally) falls to the 94 U.S. Attorney Offices across the United States and its territories.

131 There are currently 25 CHIP Units consisting of approximately 80 Assistant U.S. Attorneys, in addition to the approximately 150 CHIP prosecutors in the remaining districts and Justice Department divisions.

Programme evaluation	The following activities contribute to the assessment of counterfeiting and piracy activities in the United States: The General Accountability Office (GAO) has produced a number of reports on issues relating to intellectual property, notably on the efficiency of the national enforcement strategy.[132] GAO also provides recommendations in order to improve programme efficiency. NIPLECC produces an annual report providing information on agencies' activities regarding counterfeiting and piracy. The Department of Justice publishes statistics on criminal cases (prosecutions, conviction, sentences) regarding IPR infringement.[133] The United States Department of Homeland Security, Customs and Border Protection publishes annual statistics on the top IPR commodities seized.[134]
Awareness	Since the STOP! initiative in 2004, the Department of Commerce has undertaken numerous activities to increase awareness. Efforts have in particular focused on assisting businesses, notably small- and medium-sized businesses (SMEs) in protecting intellectual property rights (IPR), both in the United States and abroad. ▪ The website www.StopFakes.gov provides information on the STOP! initiative and allows businesses to file complaints about IPR-related trade problems. Such complaints are answered within 10 days by a trade specialist from the Office of Intellectual Property Rights (OIPR) of the Department of Commerce. The Department of Commerce also established the 1-866-999-HALT hotline answered by IPR experts at the Patent and Trademark Office (PTO) to help businesses secure and enforce their IPR through international treaties. ▪ The OIPR has developed an online training programme for SMEs to learn how to evaluate, protect and enforce their IPR. The programme, which benefits from the expertise of the PTO, the Small Business Administration and the Foreign Commercial Service, is to be launched summer 2007 and will be offered free of charge to interested parties. OIPR also provides guidance to SMEs through presentations and web-based seminars.[135] ▪ Efforts have also involved informing rights holders about the situation of IPR protection in target countries: ▪ OIPR and PTO have together with a number of US Embassies developed country toolkits containing detailed information on protecting IPR in Brazil, China, Korea, Mexico, Malaysia, Peru, Russia, and Chinese Taipei that can be accessed on www.StopFakes.gov or on U.S. embassy web-sites. The OIPR is working with PTO, the State Department, and software developers to create a toolkit template to encourage further coverage. ▪ The International Trade Administration (ITA) has established a programme with the American Bar Association through which SMEs can request a free, one-hour consultation with a volunteer attorney knowledgeable in industry IPR issues for a particular country to learn how to protect and enforce their IPR. Expertise is now available for Brazil, Russia, India, China, Egypt, and Thailand. In addition the ITA has developed a programme to promote the protection of IPR at domestic and international trade fairs. The programme involves educating trade fair attendees, exhibitors, and organisers about the value of IPR.
Industry initiatives and co-operation	The STOP! initiative has established effective communication mechanisms between business and US agencies on IP issues. This communication has notably been facilitated with the creation of the Coalition Against Counterfeiting and Piracy (CACP): a cross-industry group created by a joint initiative of the Chamber of Commerce and the National Association of Manufacturers. In response to encouragement from the Department of Commerce, the U.S. Chamber of Commerce and the Coalition Against Counterfeiting and Piracy (CACP) have released the "No Trade in Fakes Supply Chain Tool Kit". This document, which is available online at www.thecacp.com, provides strategies that both small and large companies use to protect their supply chains from the infiltration of counterfeiters and pirates. OIPR is working with the CACP to encourage US trading partners to develop similar guidelines for foreign markets.

132. See http://searching.gao.gov/query.html?qt=+intellectual+property&charset=iso-8859-1&ql=&x=16&y=7

133. See www.usdoj.gov/ag/annualreports/pr2006/Appd/appd_f.pdf

134. See www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ipr/seizure/trading/fy06_ipr_stat.ctt/fy06_ipr_stat.pdf

135. In 2006, OIPR representatives travelled to 12 cities and gave 6 web-based seminars, speaking before a total of 22 audiences.

International co-operation	The US Trade Representative (USTR) and the State Department are actively promoting global enforcement of IPRs in international forums, such as G8, OECD, APEC and through partnerships with France, Japan and the EU. This includes promoting the adoption of best practices for enforcement internationally and new initiatives to improve the global intellectual property environment. Concerns related to IPR issues are moreover addressed through a trilateral Security and Prosperity Partnership (SPP) dialogue involving Canada, Mexico and the United States. In addition, the agencies of the US government focus on enforcement by: ▪ Dismantling criminal enterprises that steal intellectual property — through the encouragement of foreign adoption of practices that lead to more investigation and prosecution of those who trade in fakes, and the establishment of relations and information sharing networks with Department of Justice foreign counterparts. Raising international awareness and support fighting the trade in fakes — through the encouragement of support for initiatives in key multilateral forums, including the Asia-Pacific Economic Co-operation (APEC), to improve global IPR. ▪ Stretching international capacity building resources — through the co-ordination of international assistance and training programmes in areas and countries where the need is greatest and increased staffing of US police in missions abroad, and an exchange programme that will bring foreign police to US soil. ▪ Establishing a more business-friendly environment abroad for rights holders through guidelines for government enforcement and the posting of additional US Patent and Trademark officials overseas to learn more about how foreign countries protect businesses from victimised by counterfeiting and piracy.

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