

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5512

8 July 1983

Limited Distribution

---

Original: English/  
French

## INTERNATIONAL TRADE IN COUNTERFEIT GOODS

### Communication by the European Communities

The following communication, dated 22 June 1983, has been received from the delegation of the European Communities, with the request that it be circulated.

---

The attached note has been prepared in conjunction with A.I.M. (Association Européenne des Industries de Produits de Marque - European Association of Branded Product Industries).

In certain instances the note refers to specific areas or countries where problems have been caused by imports of counterfeit goods. This has been done not in an attempt to suggest that any one country or geographical area is the source of the problem. The purpose is rather the opposite: counterfeit imports are a world-wide problem affecting both developed and developing countries, and if there is a responsibility for tackling it, it is a collective one which can best be dealt with by international action in the GATT. It will be seen that the interests of many major groupings in society are at risk - manufacturers and producers, consumers, governments and employees. The note is based on specific concrete examples which have all been researched and documented and further detailed information can be made available to interested contracting parties and observers.

INTERNATIONAL TRADE IN COUNTERFEIT GOODS - THE PROBLEMS

1. Introduction

Counterfeiting is popularly considered to affect mostly luxury and fashion goods (e.g. watches, perfume, fashion clothing and leather goods) and such articles as cassettes, videotapes, etc. This however gives a false impression of the problem. Recent investigations have shown:

- (a) the problem is becoming more widespread; for some industries the difficulties have already become acute;
- (b) no industrial or agricultural section of trade is immune and the problem is by no means confined to consumer goods;
- (c) many instances of counterfeiting pose severe health and safety risks for the public.

2. Information on counterfeiting

- 2.1 Information on counterfeiting is difficult to obtain. Nevertheless, enough examples are known to show that counterfeiting is an increasing world-wide problem which flourishes largely because effective controls to prevent international trade in counterfeit goods do not exist.
- 2.2 Manufacturers who find their goods are being counterfeited tend for the most part not to publicize the fact for several reasons. These include:
  - (a) counterfeiting damages the reputation of the producer, and his trademark with a corresponding impact on sales and employment;
  - (b) a suspicion of counterfeiting deters potential customers from buying goods.
- 2.3 At present, trademark owners have in practice few possibilities for preventing imported counterfeit goods from reaching the market. Once they are on sale the damage is done, markets are temporarily lost, the producer's reputation suffers and the consumer is put at risk. If the counterfeiting only comes to light when the goods are already on the market long and costly investigations, which can take from several weeks to over a year, are needed to trace the counterfeit producer.

3. Countries affected

Goods bearing counterfeit trademarks have been identified in:

Abu Dhabi	Macao
Argentina	Malaysia
Australia	Mexico
Austria	Morocco
Belgium	Netherlands
Brazil	New Zealand
Bulgaria	Nigeria
Chile	Norway
Colombia	Oman
Cyprus	Pakistan
Denmark	Paraguay
Dubai	Philippines
Egypt	Portugal
Finland	Romania
France	Saudi Arabia
Germany, Federal Republic of	Singapore
Greece	South Africa
Hong Kong	Spain (incl. Tenerife)
Hungary	Sri Lanka
India	Switzerland
Indonesia	Syria
Iran	Taiwan
Ireland	Thailand
Israel	Trinidad
Italy	Tunisia
Japan	Turkey
Kenya	United Kingdom
Korea, Republic of	United States
Kuwait	Yugoslavia
Luxembourg	

This list is not exhaustive.

4. Categories of goods affected

Cases of counterfeiting have been recorded affecting the following categories of goods:

- Aircraft and helicopter parts
- Automotive components including tyres
- China and glass
- Clothing, textiles and shoes
- Computers and computer components
- Cosmetics and toiletries
- Detergents
- Electrical equipment
- Fungicides and insecticides
- Infant feeding bottles
- Leather goods
- Lighters

Lighting instruments  
Locks  
Luggage  
Machine parts  
Machine tools  
Magazines  
Medical equipment and medicines  
Motor oil and brake fluid  
"Pasta", dairy products, biscuits, processed meat products and other foodstuffs  
Records, tapes and film  
Spectacles  
Sports goods and sportswear  
Tobacco  
Tools  
Watches  
Water filters  
Wines and other alcoholic beverages  
Woodburning stoves

5. Health and safety risks

It has been clearly established that counterfeit goods are very often of inferior quality and therefore pose a severe threat to the health and safety of the public in many situations. Some of the more serious cases in which counterfeiting has been found to have compounded the risk of using sub-standard products include:

- 5.1 Counterfeit aircraft brakes manufactured from soft rather than hardened steel.
- 5.2 Counterfeit aircraft bolts which broke after installation on a new aircraft and where it was concluded after investigation that there existed a "clear and present danger of a disastrous crash caused by bogus bolts".
- 5.3 Counterfeit fire detection and control systems for aircraft engines.
- 5.4 Counterfeit helicopter parts which are believed to have been the cause of several accidents and have involved the helicopter company in litigation.
- 5.5 Counterfeit brake actuators for buses which failed after only a dozen or so applications, compared with the genuine manufacturer's specification of a million or more applications.
- 5.6 Counterfeit hand-held panel beating tools which were so brittle that they broke into razor sharp splinters if used to hit anything.

- 5.7 Counterfeit antibiotics containing only ground up vegetable matter and talcum powder.
- 5.8 Counterfeit eye-drops containing no active constituents.
- 5.9 Heart pacemakers with counterfeit components which had to be recalled.
- 5.10 Counterfeit fungicides which resulted in the virtual destruction of the coffee crop.
- 5.11 Counterfeit jeans dyed with a substance considered to be toxic and carcinogenic.
- 5.12 Counterfeit insecticides bearing the brand slogan "Safe for Use near Food" when the counterfeit substances were not safe for such use.
6. Losses incurred by legitimate producers and by consumers of counterfeit goods

It is impossible to assess precisely the overall losses incurred by legitimate manufacturers and by users as a result of counterfeiting. The least that can be said is that four loss factors have to be taken into account:

- 6.1 Direct loss in sales as a result of counterfeit goods replacing sales of the genuine article, with consequential effects for employment.
- 6.2 Indirect loss as a result of damaged reputation and loss of consumer confidence in the genuine article.
- 6.3 Cost in time and money of taking action against counterfeiters as well as preventive measures.
- 6.4 Possible damage to health, life and limb as a result of accidents caused by counterfeit products.

The effect of counterfeiting on employment is considerable. For example, European motor parts manufacturers have estimated that counterfeiting in this sector alone costs 6,000 lost jobs per year in Europe. The corresponding calculation by the United States motor industry is 14,000 lost jobs per year.

Further individual statistics provide a rough indicator of the import of counterfeiting, for example:

- . in North America, some twelve deaths are reported to have been due to use of counterfeit biphetamines

- . the loss incurred by East African coffee farmers as a result of using counterfeit fungicide has been estimated at \$20 million
- . United Kingdom motor parts manufacturers have estimated that counterfeiting costs them some \$200 million a year in lost exports
- . Swiss watch manufacturers estimate that 10 million counterfeit watches are sold every year, representing sales of \$500 million
- . Temporary collapse of a joint venture in West Africa for the manufacture of automotive parts as a result of counterfeit imports resulted in the manufacturer's monthly turnover being reduced from £350,000 to £1,500 within six months
- . World-wide counterfeiting of records and tapes was estimated in 1980 at approximately 300 million - 350 million units with a US\$ value of between \$1,000 million and \$1,500
- . French perfume manufacturers estimate that their losses through counterfeiting amount to some F 500,00 million, that is 10 per cent of the industry's total turnover
- . One Taiwanese company was reported in 1982 to be producing 3,000 counterfeit computers per month.

#### 7. Impact of counterfeiting on developing countries

Whereas manufacturers in industrialized countries appear to have perhaps suffered most in the past from having their goods counterfeited, developing countries are increasingly suffering from the effects of counterfeiting.

- 7.1 Demand for trademarked goods in developing countries is clearly increasing and so too is the risk of unscrupulous exploitation of the consumer by the counterfeiter. But in addition to the need to provide an adequate degree of consumer protection against the counterfeit product which more and more governments see as their responsibility - there are major economic and commercial implications. Quite apart from local manufacture under licence in developing countries, there are indications that local producers are seizing the commercial advantages of marketing goods both domestically and internationally under their own trade marks. This is to some extent a function of the development process itself and the significant growth of South/South trade in non-primary products. Against this background, better protection of trade marks is clearly not only desirable but necessary.

- 7.2 An influx of counterfeit products can stifle nascent industries by "stealing" their domestic and export markets.

As domestic industries in developing countries seek to develop and sell products under their own brand names, the parallel manufacture of counterfeits can be expected to take place in direct relation to the success of the genuine brand.

- 7.3 Legitimate subsidiaries, joint ventures and licensing operations can be damaged by counterfeit imports. The perception that a given market for legitimate products will be spoilt by counterfeit can be a severe disincentive to investment and local sub-contracting.
- 7.4 The prospects of an increase in the transfer of technology depends on a climate of mutual confidence which will obviously be heightened if appropriate measures are in force for protecting intellectual property, including trade marks.

#### 8. Growth trends in counterfeiting

- 8.1 Ten years ago, counterfeiting was a phenomenon which was suffered by a handful of industries. Today, it has grown into a major international problem affecting a wide range of industrial and agricultural sectors of trade with implications for turnover, employment and consumer protection.
- 8.2 Not only is there a tendency towards the geographical extension of counterfeiting, but also the counterfeit products themselves are becoming technically and aesthetically more advanced, coupled with an increasingly aggressive approach to marketing by the counterfeiters, currently aided by the world recession. Successful actions against counterfeiters, have not matched the general growth in counterfeiting.
- 8.3 The exponential growth of counterfeiting can be explained by the low "start-up" costs - as a general rule inferior and cheaper materials are used and the advertising and other promotional costs are borne by the genuine manufacturer - and by the high returns - low production and marketing costs are generally associated with non-payment of taxes, licence fees, etc. In addition, there are grounds for suspicion that serious organized crime can often be involved in counterfeiting.

#### 9. Existing international instruments

Existing international conventions, such as:

Convention of Paris (revised 1967)

Madrid Agreement concerning the Repression of False or Deceptive  
Indications of Origin (revised 1958)

contain provisions relative to trademark counterfeiting but they do not provide adequate sanctions against international trade in counterfeit goods.

In practical terms at present the remedy for a manufacturer suffering from counterfeiting is to make use of national law (against counterfeiting, trademark infringement, product imitation, unfair competition, etc.) and enforcement mechanisms in the country where the counterfeit goods are sold or produced. These often prove inadequate and the manufacturer relies for the most part on the goodwill of law enforcement officers in the country concerned. This situation directly stimulates the impetus to international trade in counterfeit goods: as soon as a hostile environment develops in one country, production or marketing is switched to other countries. Moreover, it can be said that the opportunities offered by international trade actually stimulate counterfeiting operations.

A halt in the growth of counterfeiting cannot be expected until instruments are put in place on a multilateral level, and governments are encouraged to pass national legislation, to discourage international trade in counterfeit goods.

10. Conclusion

It will never be possible to stamp out the manufacture and sale of counterfeit goods completely. However, in view of the alarming increase over recent years in counterfeiting as a worldwide phenomenon exploiting the opportunities offered by world trade, a new international initiative against counterfeiting is imperative.

Of particular concern is the trend whereby counterfeiting is moving beyond the luxury/fashion goods sector into such sectors as motor and aircraft parts, chemicals, pharmaceuticals, wines and other alcoholic beverages, foodstuffs and medical appliances, involving direct and real risks for the public. A further serious trend is the involvement of organized crime.

The developing countries themselves are fast becoming major markets for counterfeit goods. All indicators point towards a continued growth in counterfeiting in the years ahead, especially in response to economic pressures and in view of the very large profits available.



It is thus necessary to take measures to prevent counterfeiting in all possible ways. While there are many aspects of this problem which need to be firmly dealt with - production, sale, distribution and export as well as import - action to discourage international trade in counterfeit goods is believed to be the most effective way of restricting the activities of counterfeiters. It is however essential to ensure that such action does not create new non-tariff barriers to trade in genuine goods.

The EC and its member States consider that the problem of international trade in counterfeit goods has now become of such gravity that urgent action at international level is required. They would therefore welcome the opportunity to discuss the problem and possible solutions with their trading partners.