

**THIRD GLOBAL CONGRESS ON COMBATING  
COUNTERFEITING AND PIRACY  
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**SPEAKING POINTS  
DRAFT**

Combating counterfeiting and piracy is nowadays taken very seriously by international organizations, national governments, industry and consumers, and is dealt with in various frameworks, including the World Trade Organization's TRIPS Agreement. I therefore welcome very much the opportunity to represent the WTO at the Third Global Congress on Combating Counterfeiting and Piracy, which has an important role to play in this regard.

I thought that, in my brief intervention, I could usefully recall the role of the TRIPS Agreement in providing for the effective and appropriate enforcement of intellectual property rights and then outline the work carried out in the TRIPS Council and elsewhere in the WTO relevant to this matter.

Let me start with some introductory remarks concerning the TRIPS Agreement, which is one of the three pillars of the WTO, together with the GATT and other goods agreements as well as the General Agreement on Trade in Services (GATS). Concerns in the multilateral trading system about counterfeiting and piracy predate the TRIPS Agreement. A proposal on trade in counterfeit goods was submitted as early as 1978, as part of the Tokyo Round of trade negotiations. Subsequent work led to the inclusion of a specific mandate in the Uruguay Round negotiations, which explicitly called for the development

of a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods.

It is against this background that the TRIPS Agreement was negotiated as part of the Uruguay Round. When adopted, it was the first multilateral treaty with detailed rules on the enforcement of IPRs, which are subject to multilateral dispute settlement. The TRIPS enforcement provisions are of crucial importance to creators and inventors, as they oblige WTO Members to make available procedures permitting effective action against acts of IPR infringement, including expeditious and deterrent remedies. They specify the civil and administrative procedures and remedies, including provisional measures, which must be available in respect of any act of infringement of a covered intellectual property right. In addition, as regards trademark counterfeiting and copyright piracy, WTO Members are required to make available border measures and, when counterfeiting and piracy is wilful and on a commercial scale, criminal procedures. At the same time, it is worth noting that the TRIPS Agreement is characterized by a search to preserve the balance between the different interests involved. This is reflected by the concern in the Agreement that enforcement procedures should not constitute barriers to legitimate trade and by the detailed safeguards incorporated to this effect.

Developed countries came under an obligation to comply with the TRIPS enforcement rules as from 1996 and developing and least-developed countries with effect from 2000. In the case of least-developed country Members, the obligations kick in in 2013, or 2016 in the case of pharmaceutical products and test data.

As regards follow-up in the TRIPS Council and under other WTO procedures to these obligations, I would now like to draw your attention to a number of important tools which are available under the TRIPS Agreement or elsewhere in the WTO. These include:

- At the end of its transition period, each Member's implementing legislation is reviewed by the TRIPS Council. For this review, Members, in addition to notifying their implementing legislation, reply to a checklist of questions on their enforcement regime. Under these reviews, numerous questions relating to IPR enforcement have been asked by Members and responses given. These reviews have shown that a great deal has been done by Members to enhance their enforcement procedures and remedies in the process of implementing their TRIPS obligations, even if not all concerns have been resolved in this connection.
- Article 63.3 TRIPS opens another avenue to request information from Members on a case-by-case basis in relation to specific judicial decisions or administrative rulings. Some WTO Members have recently used this provision to seek information from another Member about the implementation of its enforcement provisions, remedies, provisional measures, and the institutional structure, as well as clarification regarding specific cases.
- Another useful tool is Article 69 TRIPS, a provision which is easily overlooked, since it has found its place outside the enforcement part. Not only did WTO Members agree under this provision to cooperate with each other to eliminate international trade in infringing goods, but they also established and notified contact points in their administrations to exchange information on such trade.

- As regards more specifically China, the TRIPS Council also carries out annually a transitional review under China's Accession Protocol. This has enabled a useful exchange of views, which allows other WTO Members, *inter alia*, to be informed about and comment on China's IP legislation and its enforcement efforts.
- TRIPS enforcement provisions are also covered in WTO technical cooperation activities when requested by the recipient Members.

Let me now briefly turn to the use of the WTO Dispute Settlement Mechanism, as it has applied to consultations and the settlement of disputes relating to TRIPS enforcement provisions. To date, there have been only a few dispute settlement cases of relevance. 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. However, these complaints were the subject of amicable settlements. Another complaint has not been pursued. Only one case has reached the panel stage. It mainly concerned substantive rights, but also included a claim relating to the availability of fair and equitable enforcement procedures, which was not upheld by the Appellate Body. There have been no complaints under the DSU relating to TRIPS enforcement provisions since the beginning of 2000. All this means that, hitherto, the DSU has not served to provide further guidance on the interpretation of TRIPS enforcement provisions.

The Trade Policy Review is another relevant WTO mechanism. It provides an opportunity for Members to regularly evaluate the full range of each Member's trade policies and practices. It normally gives rise to points on IPR protection, frequently including calls upon individual WTO Members to ensure

effective enforcement. However, one must bear in mind that the TPRM is not intended to be a vehicle for enforcing specific obligations stemming from WTO agreements.

As regards the initiation of any further work on combating counterfeiting and piracy, let me first recall that this is of course a matter for WTO Members, not the WTO Secretariat, to decide upon. At this stage, some Members have indicated in the TRIPS Council that they remain concerned about what they see as an increasing level of counterfeiting and piracy, notwithstanding implementation of the TRIPS Agreement. Recently, a joint communication has been submitted by the EC, the US, Switzerland and Japan setting out ideas for a TRIPS Council work programme on this matter, for example to facilitate an exchange of information on best practices in this area. However, some WTO Members are not convinced that it would be appropriate for the TRIPS Council to take up this matter at this stage and have therefore opposed its inclusion as a permanent item on the Council's agenda.

Finally, let me emphasize the importance that the WTO attaches to cooperation with other intergovernmental organizations in this field, as in others, in particular with those organizations represented at today's conference, i.e. the WCO, the WHO and the WIPO. Cooperation with the WIPO is particularly intensive. It is based on an agreement concluded between the two Organizations in 1995 and two joint initiatives on technical cooperation in favour of developing and least-developed countries to assist them in their implementation of the TRIPS Agreement, including its enforcement section. As regards the relationship between the TRIPS Agreement and public health, the WHO is participating in our technical cooperation activities, and the WTO is participating in the work of the WHO, including the recently established

IMPACT taskforce (International Medical Products Anti-Counterfeiting Taskforce), of which, I believe, you will hear more in the course of this conference.

To conclude, let me restate that combating counterfeiting and piracy, as well as the enforcement of IPRs more generally, is one of the underlying purposes of the TRIPS Agreement and forms part of the rights and obligations to which each WTO Member has subscribed. Within the limits of its competence and mandate, the WTO Secretariat is therefore pleased to contribute to the important ongoing work on this matter which is carried out in different forums, including the Global Congress. Thank you very much for your attention.

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