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REPORT

drawn up on behalf of the Committee on External Economic Relations

on the proposal from the Commission of the European Communities to the Council (COM(84) 705 final - Doc. 2-1540/84) for a regulation laying down measures to discourage the release for free circulation of counterfeit goods

Rapporteur: Mrs Y. van ROOY

WG(VS)/2058E

PE 98.536/fin.

By letter of 24 January 1985 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 235 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation laying down measures to discourage the release for free circulation of counterfeit goods.

On 11 February 1985 the President of the European Parliament referred this proposal to the Committee on External Economic Relations and the Committee on Legal Affairs and Citizens' Rights as the committees responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for an opinion.

At its meeting of 21 February 1985 the Committee on External Economic Relations appointed Mrs van Rooy rapporteur.

The committee considered the Commission's proposal and the draft report at its meetings of 20 May, 26 June and 25/26 September 1985.

At the last meeting the committee decided unanimously to recommend to Parliament that it approve the Commission's proposal, subject to the following amendments.

The Commission stated before the committee that it had not taken a decision on the amendments.

The committee then adopted the motion for a resolution as a whole unanimously.

The following took part in the vote: Dame Shelagh ROBERTS, chairman; Mr HINDLEY and Mr van AERSSSEN, vice-chairmen; Mrs van ROOY, rapporteur; Mr KILBY, Mr LEMMER (deputizing for Mr Zahorka), Mr PANTAZI (deputizing for Mr Massari), Mr ROSSETTI, Mr SEELER, Mr TOUSSAINT, Mrs WIECZOREK-ZEUL and Mr ZARGES.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached.

The report was tabled on 1 October 1985.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee of External Economic Relations hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution together with explanatory statement:

- I. Proposal for a Council regulation (EEC) laying down measures to discourage the release for free circulation of counterfeit goods (Doc. 2-1540/84)

Text proposed by the Commission
of the European Communities

Text amended by the
European Parliament

Preamble and recitals 1 and 2 unchanged.

Amendment No. 1

After the second recital add a new recital as follows:

Whereas the laws of the Member States already give proprietors of registered trade marks substantive rights to protect their industrial property in registered trade marks, it is desirable that improved and common procedures should be established to facilitate the exercise of these rights in the case of counterfeit goods entering the Community from third countries;

Remaining recitals and Article 1(1) unchanged

Article 1(2):

2. For the purpose of this Regulation 'counterfeit goods' means any goods bearing without authorization a trade mark registered in accordance with Community law or the law of the Member State in which the goods are entered for free circulation.

Amendment No. 2:

2. For the purpose of this Regulation, 'counterfeit goods' means any goods bearing without authorization a mark identical to, or substantially indistinguishable from a trade mark registered in accordance with Community law or the law of the Member State in which the goods are entered for free circulation.

Article 2

Article 2

Paragraphs 1 and 2 unchanged

Amendment No. 3

Amend paragraph 3 to read as follows:

3. The customs authorities or the Commission, according to the circumstances, shall decide on the application and inform the person concerned accordingly. The applicant may be required to provide security in an amount sufficient to indemnify the competent authorities or compensate the importer for any loss or damage resulting from measures adopted by those authorities where goods in relation to which action is taken by customs authorities pursuant to this Regulation are subsequently shown not to be counterfeit. The applicant may also be required to pay a sum to cover the administrative or legal costs resulting from the application.

3. The customs authorities or the Commission, according to the circumstances, shall decide on the application and inform the person concerned accordingly. The applicant may be required to provide security in an amount sufficient to indemnify the competent authorities or compensate the importer for any loss or damage resulting from measures adopted by those authorities where goods in relation to which action is taken by the customs authorities pursuant to this Regulation are subsequently shown not to be counterfeit. The applicant may also be required to pay a sum to cover the administrative costs resulting from the application.

Paragraph 4 unchanged

Article 3 unchanged

Article 4

1. Where a customs office to which an application has been transmitted pursuant to Article 3 establishes that goods entered for free circulation correspond to the description of the counterfeit goods contained in that application, it shall suspend the release thereof, and inform the importer accordingly. The customs office shall also inform the trademark owner of the measure.

Article 4

Amendment No. 4

1. Where a customs office to which an application has been transmitted pursuant to Article 3 establishes that goods entered for free circulation correspond to the description of the counterfeit goods contained in that application, it shall suspend the release thereof, and inform the importer accordingly. The customs office shall also immediately inform the applicant (the trademark owner or his representative) of the measure.

The Customs services may ask the applicant to confirm whether or not the goods are counterfeit and, if it does, it shall give the applicant an opportunity to examine and, if necessary, analyse samples of the goods.

2. Whether the goods are counterfeit shall be determined in accordance with Community law where it is applicable to the case in point, and where it is not, in accordance with the law of the Member State in the territory of which they were entered for free circulation. The criteria applied to establish whether the goods are counterfeit shall be the same as those used to determine whether goods produced in that Member State are counterfeit. Decisions taken by the competent authority shall set out the grounds on which they are based.

Amendment No. 5

2. Whether the goods are counterfeit shall be determined in accordance with Community law where it is applicable to the case in point, and where it is not, in accordance with the law of the Member State in the territory of which they were entered for free circulation. The criteria applied to establish whether the goods infringe the rights of the trade mark owner shall be the same as those used to determine whether goods produced in that Member State infringe these same rights. Decisions taken by the competent authority shall set out the grounds on which they are based.

3. Release of the goods shall be suspended until it is conclusively established whether or not they are counterfeit. However, where suspension of the release of goods referred to in paragraph 1 is confirmed by an interim decision of the competent authority and further proceedings which the importer is not entitled to initiate are required before a final decision can be taken, the importer may, by application made in writing and provided all the import formalities have been completed, secure the release of the goods if such further proceedings are not initiated within ten working day from the date on which their release was suspended.

Amendment No. 6

3. Release of the goods shall be suspended until it is conclusively established whether or not they are counterfeit. However, a procedure shall be provided under which both the applicant and any relevant authority will have the possibility to initiate proceedings before a competent authority to seek an interim decision and subsequently a final decision as to whether or not the suspension should be confirmed. If within 10 working days of the suspension neither the applicant nor the relevant authority initiates such proceedings, the goods shall be released provided all the import formalities have been complied with.

Paragraph 4 unchanged

Article 5

1. Member States shall adopt the measures necessary to allow the competent authorities to confiscate goods the release of which has been suspended pursuant to Article 4 where it is established that they are counterfeit.

Confiscated goods shall be disposed of outside the channels of commerce in a manner which minimizes harm to the trademark owner. The competent authorities may, however, employ methods other than the disposal of the confiscated goods outside the channels of commerce on condition that they constitute an effective deterrent to trade in counterfeit goods.

2. Measures other than confiscation may, in exceptional cases, be taken by the competent authorities where they effectively deprive those responsible for the importation of the goods of the economic benefits of the transaction and constitute an effective deterrent against engaging in further transactions of the same kind.

Articles 6 and 7 unchanged

Article 8

Paragraphs 1 and 2 unchanged

Article 5

Amendment No. 7

1. Without prejudice to the remedies to which the proprietor of a registered trade mark whose trade mark has been found to be infringed, is entitled, Member States shall adopt the measures necessary to allow the competent authority to confiscate goods the release of which has been suspended pursuant to Article 4 where it is established that they are counterfeit.

Confiscated goods shall be disposed of outside the channels of commerce in a manner which minimizes the harm to the trade mark owner.

Amendment No. 8

2. Delete

Article 8

Amendment No. 9

Insert the following paragraph 3:

3. Within three years of the entry into force of this Regulation, the Commission shall report to the European Parliament and the Council on the operation of the system instituted thereunder and such amendments as need to be made thereto.

Article 9 unchanged

A

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation (EEC) laying down measures to discourage the release for free circulation of counterfeit goods

The European Parliament,

- having regard to the proposal from the Commission to the Council¹,
 - having been consulted by the Council pursuant to Article 235 of the EEC Treaty (Doc. 2-1540/84) and having regard to Article 113 of the that Treaty,,
 - having regard to the reports of the Committee on External Economic Relations and the Committee on Legal Affairs and Citizens' Rights, and to the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (Doc. A 2-116/85),
 - having regard to the result of the vote on the Commission's proposal,
1. Approves the proposal for a regulation, subject to adoption of the amendments tabled thereto;
 2. Calls on the Commission to adopt, pursuant to Article 149, second paragraph, of the EEC Treaty, the amendments to its proposal endorsed by Parliament;
 3. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

¹ OJ No. C 20, 22.1.1985

EXPLANATORY STATEMENTI. Introduction

1. International trade in counterfeit goods has been growing rapidly in recent years, both in terms of the value and variety of the goods concerned and in terms of their geographical spread.

The main aspects of this problem, and in particular its implications for production and consumers, are discussed in the draft report on international trade in counterfeit goods (PE 96.288), which also outlines a number of possible solutions to the problem.

This report, drawn up in response to the proposal for a Council regulation laying down measures to discourage the release for free circulation of counterfeit goods (COM(84) 705 final), will examine a single aspect of the problem. Information on the subject of trade in counterfeit goods was made available by manufacturers', traders' and consumers' organizations in Europe as well as by the Commission and the Customs Cooperation Council, in particular at the public hearing organized by the European Parliament's Committee on External Economic Relations on 22 February 1985.

It should be noted also that the legal aspects of the proposal for a regulation are considered in a separate report by the Committee on Legal Affairs and Citizens' Rights. Both rapporteurs felt that, although they had no difficulty in coordinating their work, the sharing of responsibility by committees on proposals for Community legislation is an undesirable practice.

2. The proposal for a regulation under consideration is designed to protect the Community more effectively against imports of counterfeit goods from third countries. Under the regulation, customs authorities at the Community's external frontiers would be empowered to suspend the release of suspect goods for free circulation. Where it is established that the goods in question are counterfeit, and the rights of the trademark owner are infringed, the goods would be confiscated.

3. The proposal stems from the realization that customs clearance is extremely important, since it is here that counterfeit goods may be prevented from reaching the markets of the Member States. Experience has shown that, by the time counterfeit goods appear on the Community market, most of the economic damage is already done; usually, it is not possible to remove the goods from the market and legal redress is particularly difficult to obtain.

4. Community measures appear all the more necessary since the Member States have extremely divergent systems of rules in this area: in some Member States (especially France, the Federal Republic of Germany, Ireland and the United Kingdom), the customs authorities are already empowered, to varying extents, to block or suspend the release of counterfeit goods for free circulation, whereas in others (Denmark, Greece, Italy and the Netherlands), the customs authorities have no powers in this field. (Belgium and Luxembourg allow some, albeit very limited, scope for action of this type.) A Community regulation in this field is therefore desirable: the level of protection granted to trademark owners in the Member States should be comparable. It should be stressed that, since trademarks are protected by law in all Member States, intervention by customs authorities is clearly justified.

5. A system of Community rules also appears desirable in the light of international developments, especially the current work within GATT on the adoption of a code outlawing trade in counterfeit goods. It is highly likely that this subject will occupy a key place in the next round of multilateral trade negotiations; the adoption of a system of Community rules would therefore strengthen the Community's negotiating position from the point of view of securing a more general agreement.

Since, moreover, there could be lengthy negotiations in GATT before an agreement is found, the Community clearly has to take some action independently in view of the urgency of the problem.

II. Scope of the proposed regulation

6. The proposal for a regulation submitted by the Commission on 14 December 1984 applies solely to imports from third countries: this restriction is consistent with the efforts to minimize and ultimately abolish customs checks within the Community, with a view to creating a unified internal market. This approach can be supported, although it should be borne in mind that counterfeit goods are produced and traded on a vast scale within the Community too and that the relevant national laws ought therefore to be tightened up appropriately.

7. The regulation is, in addition, limited in scope by the definition, for its purposes, of 'counterfeit goods'. This term is in fact taken to mean 'any goods bearing without authorization a trademark registered in accordance with Community law or the law of the Member State in which the goods are entered for free circulation' (Article 1(2)). Because of this narrow definition, only infringements concerning trademarks would be covered by the regulation, whereas those concerning copyright, patents, and industrial models and designs will be excluded. This limitation can be accepted, however, since counterfeit trade-marked goods are probably more easily identified than other forms of counterfeits. Furthermore, particular care should be taken not to overburden customs authorities with new duties.

The requirement of registration in the Member State to which the goods are to be imported imposes a further restriction: for the regulation to operate effectively, and to prevent circumvention of its provisions, trade-marks would have to be registered by their owners in all the Member States. The creation of a European trademark would therefore represent an important step forward, since only one registration procedure would be necessary.

It must be stressed that the definition of counterfeits as goods 'bearing without authorization a registered trademark' cannot be extended to include parallel imports.

III. Applications for action by the customs authorities

8. The procedure would be initiated through a written application by a trademark owner to the customs authorities of a Member State (or to the Commission in the case of a Community trademark) with a view to suspending the release of specified goods. If the application proved

justified, the customs office which might be required to take action upon importation of the goods would be notified. In this connection it should be noted that, on average, only about 5 percent of goods passing through Community customs are routinely examined¹. Implementation of the regulation would therefore cause a substantial increase in the workload of customs services unless sufficient information is provided on the goods in question: the draft regulation specifies that owners of trademarks would be required to provide 'all such information as is necessary' for identifying disputed goods. It is in the trademark owner's own interest to provide as much information as possible, in order to maximize customs officials' chances of identifying counterfeit goods, though this point must be further clarified in the implementing provisions referred to in Article 8(2) in order to prevent conflicting criteria being applied by national administrations.

9. To ensure that this procedure cannot be used to cause undue damage to legitimate competitors, and hence to create new barriers to trade, the proposal for a regulation stipulates in Article 2(3) that the applicant may be required to provide 'security' in an amount sufficient to indemnify the competent authorities or compensate the importer for any loss or damage resulting from abuses of the procedure. The provision of adequate security should, however, be the rule, and exemption from it the exception, in view of the serious damage which importers of legitimately marketed products may incur as a result of the suspension procedure. The form and nature of the security must be defined in the implementing provisions referred to in point 8.

Article 2(3) would permit an applicant to be charged a fee to cover the administrative or legal costs resulting from the application. The imposition of payments to cover legal costs is a prerogative exercised by the judiciary and not by customs services. This provision should therefore be deleted from the regulation, which is the purpose of amendment 3. As regards the payment of administrative costs, it should be pointed out that it is also in the public interest to prevent the importation of counterfeit goods. It is therefore unnecessary for the applicant to bear the administrative costs in full. Implementing regulations must include specific rules on the level of this sum in order to ensure uniform application in the Member States.

IV. Action by the customs authorities

10. Once it was established that the disputed goods matched the description received, the customs authorities would defer authorization of release and inform all interested parties. The suspension would remain in force 'until it is conclusively established whether or not ... (the goods) are counterfeit' (Article 4(3)). Special provisions would apply in the case of suspensions confirmed by interim order, allowing for the release of the goods upon application by the importer if the trademark owner did not initiate further proceedings. This procedure seems rather complicated and not very clear. In amendment 4 an alternative procedure is proposed, laying down what action would have to be taken by the customs service, specifying what information it would have to forward to the importer and to the applicant,

¹See the communication from the Commission to the Council on the coordinated development of computerized administrative procedures (COM(84) 556 final)

allowing for samples to be taken from the consignment, and entitling the applicant to examine the goods (Article 4(1)). As regards subsequent procedure, it is proposed that, if within 10 working days of the suspension neither the applicant nor the customs administration has initiated proceedings before a suitably empowered body in order to seek an interim decision confirming suspension, the goods should be released, provided that import formalities have been complied with (Article 4(3)).

V. Special problems

11. Articles 5(1) and (2) stipulate inter alia that confiscated goods would be 'disposed of outside the channels of commerce in a manner which minimizes harm to the trademark owner'. Moreover, derogations from this provision would be possible, though these are not defined in any greater detail. In fact, it seems that the only means of nullifying the injury caused to the owner of the trademark would be to hand over the counterfeit goods to him or destroy them.

12. Given the highly complex nature of the proposed system which would have to be complemented nevertheless by suitable implementing regulations, it would appear expedient to insert a specific provision whereby application of the legislation would be reviewed three years after its entry into force, with a view inter alia to determining whether its scope might be extended to cover other industrial-property rights, especially copyright, and registered models and designs.

OPINION

(Rules 102 and 47 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Jean BESSE

On 13 November 1984, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Besse draftsman of an opinion on the motion for a resolution (Rule 47) on international trade in counterfeit goods (Doc. 2-889/84).

On 27 February 1985, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Besse draftsman of an opinion on the proposal for a Council Regulation laying down measures to discourage the release for free circulation of counterfeit goods (Doc. 2-1540/84).

At its meeting of 26 March 1985 the Committee on Economic and Monetary Affairs and Industrial Policy considered the draft report and adopted its conclusions - unanimously.

The following took part in the vote:

Mr SEAL, chairman;
Mr BESSE, rapporteur;

Mr BEUMER, Mr BONACCINI, Mrs BRAUN-MOSER (deputizing for Mr ABELIN), Mr CASSIDY, Mr CHRISTODOULOU (deputizing for Mr BISMARCK), Mr CRYER (deputizing for Mrs GREDAL), Mr DE URIES, Mr DUCARME (deputizing for Mr DE GUCHT), Mr FALCONER, Mr FILINIS, Mr GAUTIER, Mr HERMAN, Mr MATTINA, Mr METTEN, Mr MIHR, Mr MÜHLEN (deputizing for Mr ERCINI), Mr PAPOUTSIS (deputizing for Mr WAGNER), Mr PATTERSON, Mr REMACLE (deputizing for Mrs Van HEMELDONCK), Mr ROGALLA, Mrs Van ROOY (deputizing for Mr FRANZ), Mr STARITA, Mr VISSER (deputizing for Ms QUIN) and Mr Von WOGAN.

The trade mark is the sign (label, product-name, logo, picture, packaging) which identifies and distinguishes one product or service from another. Registration gives the owner exclusive rights over his trade mark. Counterfeiting is an offence in that it consists of using another person's trade mark, without his authorization, by identical or almost identical reproduction of the sign which constitutes that trade mark.

Counterfeiting of trade marks has always existed, and the development of techniques and the liberalization of trade over recent years have certainly helped to make this phenomenon more widespread.

1. THE ECONOMIC CONSEQUENCES OF TRADE MARK PIRATING

As one of the assets of the manufacturer or the trader, the trade mark is a way of attracting and keeping customers and a market. It also acts as an economic monitor, identifying the origin of products and ensuring the protection of consumers. The counterfeiting of trademarks, particularly now that it is more widespread, has therefore become a problem in both economic and legal terms.

1) The extent of the phenomenon

The practice of counterfeiting nowadays affects almost every economic sector and is widespread in most countries.

- Economic sectors which are particularly affected

For a long time, counterfeiting was mainly aimed at luxury goods. It is still rife in this sector (watches, perfumes, leather goods, clothes) and is often on an industrial basis. However, counterfeiting has recently spread to much vaster areas: such as components (brakes, gear-boxes, etc.) in the car and aviation industries¹. The agricultural processing industry and the pharmaceutical industry are affected by counterfeiting (medicinal products, cardiological equipment)². Finally, in the cultural sector, there has been an increase in counterfeit films and recordings over the past few years.

- The countries affected

The world economy as a whole is adversely affected by the growing practice of

¹ counterfeit components were found on 600 Sikorski helicopters delivered to NATO.

² In Kenya, the coffee harvests were ruined by counterfeit fertilizers; in the USA, 12 people are reported to have died in the last few years after taking counterfeit amphetamines.

counterfeiting. It is common knowledge that counterfeiting is particularly prevalent in several of the newly industrialized countries of South-East Asia (Taiwan, Hong Kong, South Korea) and Japan, but the same applies to Brasil, Mexico and Morocco. It is also true that counterfeiting practices are still rife in all the industrialized countries, in the European Community and the United States. Counterfeiting is extremely prejudicial to economic activity in the industrialized countries which own a considerable number of trade marks. Finally, the circulation of counterfeit goods are a threat to the health and safety of consumers everywhere.

2) The economic consequences of trade mark counterfeiting

The growth and development of trade mark counterfeiting is causing a great deal of harm especially to the economy of the European Community.

a) The cost of investigating and prosecuting counterfeiters

Some large companies employ detectives and lawyers to track down and prosecute counterfeiters. The cost of such investigations, which often have to be carried out abroad, can be very high - from 1 to 5% of the companies' turnover. Small and medium-sized undertakings cannot usually afford such outlay¹.

b) Loss of earnings

The sale of counterfeit goods leads to a loss of earnings for companies which are victims of this practice. This loss of earnings is on the same scale as the growth of counterfeiting and is thought to be around 2000 million francs in France, and between 6000 and 7000 million dollars in the United States² in 1982.

c) Loss of reputation

The loss of reputation which follows counterfeiting practices is far more serious for the manufacturer or trader than the immediate loss of earnings.

¹ There are some private organizations specializing in tracking down counterfeiters: the Anti-counterfeiting Group in the United States, and the Bureau d'Enquête sur la Contrefaçon (B.E.C.) set up by the International Chamber of Commerce.

² The perfume industry in France estimates the losses resulting from counterfeiting at 10% of its annual turnover; the Swiss clock and watch industry at 1000 million Swiss francs per annum.

As soon as quality or luxury goods are counterfeited and sold in large quantities at low prices, they lose their originality. Regular customers may abandon once and for all, if not the manufacturer and the trade mark, at least one of the range of products. An incident or accident caused by a counterfeit component can do untold damage to the reputation and future of a trade mark¹.

d) The risks for the consumer

Counterfeit goods can expose consumers to serious health and safety risks. The cost of accidents should be counted among the indirect economic consequences of counterfeiting.

e) Loss of jobs

It is difficult to make any certain assessment of the effects of counterfeiting on employment. There is an estimated figure of 20 000 jobs lost in France, 40 to 50 000 in the Federal Republic of Germany, and 130 000 in the United States in 1983. In addition to the actual number of jobs lost, it is also important to take account of the effect that counterfeiting may have in certain circumstances on an undertaking which is already experiencing difficulties, and which may consequently be forced to close down.

Combatting counterfeit goods is not only a legal matter involving the protection of industrial property, but is in a wider sense a matter of international trade policy. Counterfeiting generally operates outside the laws relating to companies and taxation, and takes advantage of the investments and advertising costs borne by the owner of the trade mark. It thus acts as a threat to the economy, to the producers whose trade it is stealing, and to the consumers who are being misled.

11. PROTECTION OF THE EUROPEAN COMMUNITY AGAINST THE COUNTERFEITING OF TRADE MARKS

1) The Commission's proposal for a Council Regulation

The Commission's recent proposal² contains two main provisions: the

¹The holder of the trade mark often has to guarantee the after-sales service in the event of a problem caused by a faulty counterfeit part.

²COM(84) 705 final

suspension of the release of counterfeit goods entered for free circulation, and their possible confiscation. Provided that he can furnish sufficient proof to validate his suspicions, the trade mark owner can therefore apply to the customs authorities to suspend the release of the goods in question for a certain period. Where it is established that the goods in question are counterfeit, they may be confiscated by the competent authorities. This latter provision is essential in order to avoid one of the problems commonly encountered when combatting counterfeit goods - namely, the return of the goods. However, this proposal for a regulation only applies to goods imported from third countries, and not to goods imported from Member States or in transit. This restriction is regrettable in that it lessens the economic and 'political' scope of the regulation.

2) National legislation

There seems to be a growing trend in the Community to strengthen national legislation aimed at combatting counterfeit goods. Customs control, lifting the requirement of customs secrecy, and court injunctions against the further production of counterfeit goods are all essential to this. Although the establishment of a whole battery of repressive measures, as in the United States¹, must be avoided - since such measures might apply only to the middlemen involved in counterfeiting, rather than those who are directly responsible - counterfeiting should not go unpunished, but rather should be investigated and curbed. Tacit acceptance only serves to encourage these practices both in the case of goods from third countries and in intra-Community trade. In the long run, harmonization of such legislation is needed on a Community level. The argument in favour of the free movement of goods is hardly applicable with regard to counterfeit goods.

3) Free movement of goods

There is always the danger that combatting counterfeit goods may lead to protectionism. In order to guard against this, the proposal for a regulation provides, for example, that there should be a maximum period for the suspension of the release of goods (10 days), and that the trade mark owner applying for

¹In the United States, counterfeiting is punishable by a fine of between 250 000 and 5 million dollars and a 5-year prison sentence.

this should have to pay a security. It is regrettable that, in the Commission's proposal, the payment of a security should only be optional, and that there should be no provision for penalties for undertakings which act dishonestly.

4) Prevention

More checks to determine whether goods are counterfeit, and more penalties against counterfeiting may act as a deterrent but will only have a limited effect. In conjunction with these measures, it is important to take preventive action to tackle the phenomenon at source. Counterfeiting involves a complex network, and is difficult to detect (counterfeiting activities often occur sporadically; they are interrupted and then resumed). Preventive action against counterfeiting therefore requires coordinated action by all the authorities concerned: civil service, customs, national and international courts, and private anti-counterfeiting organizations.

To this end, it is essential to set up a trade mark data bank which would both facilitate the task of establishing the priority of a trade mark¹ and provide the necessary information for cross-checks and selective controls at frontiers. The Community should encourage and assist in the setting up of such European data banks which are currently being formed; it must have an effective instrument of its own in this sphere.

III. PROTECTION OF THE INTERNATIONAL COMMUNITY AGAINST THE COUNTERFEITING OF TRADE MARKS

The world-wide scale of counterfeiting means that there should be an international programme of action.

1) The GATT draft code

Owing to the slow progress of GATT's work on drawing up a code, begun in 1979, the Community was forced to go ahead and provide itself with a special, albeit partial protection.

The Commission must therefore work within GATT to ensure that the draft code is introduced. The adoption of the Community Regulation will help advance this work and have a positive influence on the contents of the code².

¹ Unintentional counterfeiting may occur through ignorance of the fact that a registered trade mark already exists, and the trade mark owner may exploit this situation.

² In fact, the burden of proof for the applicant is greater in the GATT draft code than in the Commission's proposal for a regulation.

Several of the developing countries do not agree that GATT is the appropriate body to discuss the problems of counterfeit goods but it should again appear on the agenda of the next GATT negotiations.

2) Trade negotiations

Counterfeiting in several countries can only thrive with a passive or active connivance of the national authorities. Countries affected by counterfeiting should therefore put pressure on the authorities of those countries where large counterfeiting centres are based to introduce and enforce the necessary measures. The Community, for its part, should in future back up its trade agreements such as the Multifibre Arrangement or the granting of generalized preferences, with safeguard clauses relating to counterfeit goods. The same applied to trade negotiations with South-East Asian, South American or African countries.

3) Close coordination between the national and international authorities concerned

The way in which regulations are applied is just as important as the provisions they contain. This calls for close cooperation between the courts, administrative, customs, national and international authorities concerned¹. It also means that specialized staff should be trained and their number increased.

In conclusion, the Committee on Economic and Monetary Affairs and Industrial Policy:

1. Stresses the illicit nature of the production and marketing of counterfeit goods which are often the work of complex and highly organized international networks, acting at the expense of trade mark owners, reaping the benefits of the latter's investments, and disregarding the laws relating to employment and taxation;
2. Notes that the development of trade mark pirating, particularly since this is now affecting many industrial products as well as merely luxury goods,

¹The Customs Cooperation Council should play a decisive part in this.

is detrimental to the economy, in particular the EEC economy, in terms of loss of earnings, loss of market, loss of jobs, and the costs incurred, and constitutes serious hazards to the health and safety of consumers;

3. Approves therefore the Commission's proposal which has proved to be necessary and which contains valuable provisions to assist in combatting counterfeiting;
4. Requests therefore that national legislation in this sector should be consolidated and harmonized as soon as possible so that, without hindering the free movement of goods, the production and marketing of counterfeit goods within the Community should be stamped out by means of rapid and suitable procedures;
5. Regrets that the Commission's proposal does not contain provisions relating to the prevention of counterfeiting, without which any efforts to combat this practice will be fruitless; to this end requests the Commission to work with the competent authorities of the Member States to set up a Community trade mark data bank, which is the instrument needed for close supervision of counterfeiting at all times, thus enabling selective controls to be carried out to good effect at frontiers, and generally assisting in the task of providing proof of counterfeiting for all the parties concerned;
6. Further requests the Commission, as part of its trade policy, to introduce safeguard clauses relating to counterfeiting in the trade agreements that it negotiates and concludes (Multifibre Arrangement, granting of generalized preferences, trade agreements with South-East Asian countries in particular); appropriate economic sanctions could act as a deterrent on those states which tolerate counterfeiting activities;
7. Urges that the work begun in 1979 on the adoption of a GATT code on this subject should be pursued, and requests the Commission to play an active role in it so that a world law in the interest of all countries can be introduced and enforced with the cooperation of all the national and international authorities concerned;
8. Hopes, finally, that the Commission will draw up new proposals with a view to stepping up the fight against counterfeit films, recordings and copy-rights which threaten the cultural and scientific patrimony of the Community.