

Consultation response

Call for evidence: EU toolbox against counterfeiting



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

The **American Chamber of Commerce to the EU** (AmCham EU) welcomes the chance to submit evidence on the EU toolbox against counterfeiting, an important initiative for all our member companies.

As the European Union (EU) faces unprecedented geopolitical, economic and health challenges, it has become increasingly necessary to identify key pillars that will not support only the economic recovery, but that also pave the way towards EU leadership on the global stage.

Counterfeiting puts consumers' health and safety at risk, produces security vulnerabilities in critical infrastructures and causes substantial economic loss for companies and governments. This is particularly relevant for Europe; out of the ten most affected countries by counterfeit, eight are European¹. As fighting counterfeiting is mainly about consumer protection, efforts need to focus on identifying sources of counterfeiting and taking appropriate actions including partnering with law enforcement agencies to prevent products from reaching the market, as well as on the ability to remove multiple listings and prevent repeat infringements. AmCham EU member companies are committed to playing a prominent role in the fight against counterfeits and welcome the Commission's call for evidence.

All players in the supply chain have a role to play in combating counterfeits. Intellectual property (IP) intensive industries are key to both the US and EU economies and the worrying growth of counterfeiting, both in size and in scope, is a challenge that must be fought jointly.

We must not forget why we need an EU toolbox. IP infringements have an adverse impact on rights holders and legitimate businesses, and undermine critical competitive advantages in innovation while posing threats to consumers' health and safety, security, jobs and economic growth.

IP enforcement is generally well supported in the EU thanks to the current Enforcement Directive. Hence, we welcome the European Commission's intention to continue monitoring its application while ensuring that appropriate remedies are available.

AmCham EU also supports the Commission's intention to use existing programmes to combat counterfeiting and protect IP. These include greater cross border cooperation, a greater role for online intermediaries, building on the existing co-regulatory tools (eg, the Memorandum of Understanding [MoU] for the purpose of stopping sale of counterfeited goods online) and more enforcement actions by Member States.

AmCham EU notes the EU toolbox's ambition to be coherent with the soon to be adopted Digital Services Act (DSA), especially in terms of reinforcing the important role of online intermediaries in preventing the sale of counterfeited goods online.

It is also important to note that the measures adopted and implemented by the signatories of the MoU for the purpose of stopping sale of counterfeited goods online should serve as a starting point for the toolbox.

¹ OECD & EUIPO Report, "Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact", 2016

Below we provide some more specific comments on the objectives of the toolbox as defined in the Commission's call for evidence:

- Clarify the actions, measures and roles, which could be taken by rights holders and online intermediaries to fulfil their responsibilities in a spirit of mutual cooperation and information sharing;
- Facilitate effective and efficient information sharing between all key actors, including IP rights holders, online intermediaries and law enforcement agencies;
- Enhance cooperation between rights holders, online intermediaries and national and EU public authorities;
- Promote innovation, development and the use of adequate tools and new technologies to detect, combat and prevent counterfeiting activities;
- Support industry-led Know Your Business Customer Programmes (eg, in the DSA); and
- Training and education for those taking down and seizing counterfeit products.