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Authentic and counterfeit products

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Key points

This policy brief examines the problem of the trade in counterfeit products, which is being carried out inside the EU, in the context of the common trade policy. It refers to the way in which illicit products are placed on the market and how this illegal trade take place. The seriousness of illicit trafficking has greatly reduced EU economic profits and jobs and has favored many who are unfairly enriching. Afterwards, the main cause of the phenomenon, the free trade areas, is analyzed and then, some problems that arise in relation to health and intellectual property rights. At the end, indicative proposals are suggested to confrontation the phenomenon.

This policy brief makes three key suggestions:

- ◇ the need for cooperation of the EU members and the good functioning of the memorandum which they signed for the fight against illicit trade.
- ◇ Informed consumers, active and responsible with awareness of their rights and the possibility of cooperating with ECC to help to solve the issue.
- ◇ The OLAF's important role to investigate more cases of fraud and her programs which can fund the researches.

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Introduction

Nowadays, purchases from the internet have been increased and this fact in combination with the economic crises, which has broken out in the last years in the most European countries, has pushed many people to take advantage of this situation. They make pages on the internet and sell clothes as brands while they are fake. These sellers use huge discounts to attract consumers with the idea that an expensive product can be acquired easier now. The problem requires immediate solution via the insertion of each member-state's Minister as it put in danger the consumer's safety. The consumer is deceived but beyond that we have to focus on the thousand places of work and on the exorbitant



amounts which every year the EU loses. Aren't the 8 billions of Euros per country, which misses the EU every year, enough quantity to deal with the issue¹?

The problem is all about the EU, from the consumer to the governments. People are dissatisfied and live in ignorance due to the lack of regulations and legislations (the article 325 of the Treaty on the Functioning of the EU isn't detailed). On the other hand, the national treasuries and the European treasury miss billions every year. For example, France and Germany have lack of 3.5 billions². So the solution must be given from the EU with stricter measures.

Analysis

Common commercial policy

The common commercial policy is one of the EU's exclusive responsibilities (article 3 par.1 TFEU). That means that the EU is the only one who can legislate and issue legally binding acts (art.2 par.1 TFEU). The trade's importance for the EU is huge as her exports cover 36 millions work places inside and 20 millions outside the EU.³

Counterfeit products and free trade zones

The trade of fake products is about 2.5% of internationally traded products, according to a report by the OECD.⁴ The free trade zones are multiplied and simultaneously the exports of counterfeit products are increasing. Particularly, when a new free trade area is created, the value of the exporting products is increased by 5.9%. "This is a clear indication that free trade zones are being used by criminals to smuggle their imitation products," said OECD Public Affairs Director Markos Bondouri, adding: "We want this to be a call for action and we will work in the coming months to help free trade zones to increase their efforts to end the illegal trade, while maintaining their role in facilitating legitimate trade."⁵

While talking for Greece due to her geographic placement, it stands to reason that she has a very important place, as the mediator country, on the grading of countries who take part in transport of illegal products. Greece is the passage to Europe because she has 3 trade zones via the ports of Piraeus, Thessaloniki and Heraklion.

Why are all these things so important for the EU and her citizens? These zones help especially the illegal trade because the taxation, duties and customs controls are very low. Documents relating to the receipt, storage, or transfer of goods within the zones are free from stamp taxes.⁶ For exactly this reason, we saw on the internet famous brands at very low prices. If the prices were like they are on the official sites, no one would buy the



products and as a result the counterfeit companies would not have profit. So the sellers already know that they have to attract people with the price and not with the quality and for that they use the e-commerce, because people cannot distinguish the difference via the screen.

Maybe the free trade zones make new work places especially in the developing countries and economies which attract foreign investments because of the low taxation but concurrently the governments' earnings of the reception countries are reduced. So the revenue of the trade zones isn't enough to cover the damage. The situation is getting worst due to incompetent policing. The private companies want to increase the number of free trade zones so as to gain more.⁷

Fake products and health problems

Secondly, another problem that arises, is about the materials which clothes and shoes are made from. Because the manufacturers use another materials from that which are used at the original products, low quality's textiles and colors which aren't written on the labels, many people are in danger, especially kids. Some of these may cause allergic or cancerous reactions. Peoples' health is above all the priorities but it's true that is very difficult to be a such an analytical control on all of these products which come in Europe.

About the consumer protection

Directive of European Community: 1999/44/EC article 3. According to this article, the consumer has the right to demand the repair of the damaged product, restoring the counterfeit product to a genuine one or money return. For whichever destruction or counterfeit product, consumers can contact with the European Consumer Center or they can just inform directly the seller or the site via an email for their problem.

Copyright infringement

The EU Intellectual Property Office is responsible about the copyright infringement and manages trademark rights. On average, the Office receives and examines each year over 115,000 trademark requests and 85,000 draft requests. The EUIPO inform and advice those who want to make a new company or to use a new trademark. Also, it helps the offices of intellectual property of every country of the EU to collaborate and it has created the European Trademark, Design and Model Network.⁸

The Parliament and the Council decide according to the ordinary legislative procedure to adopt measures for the creation of European IRPs (article 118, TFEU). In this way, the creators are protected and the internal market has a better function.



Recommendations

International co-operation is considered to be necessary to deal with the issue because the judicial solution is not "friendly" or understandable to the citizens. In order this cooperation to come true, the members of EU signed the Memorandum of Understanding. This memorandum clarifies the rules for the notification and withdrawal (NW) of counterfeit products. So, there are two mechanisms to combat counterfeit products: one for the removal of the individual offers of counterfeit products from web sites and one that will update online platforms for users selling counterfeit products.⁹ For the better functioning of the memorandum and the procedures (NW), preventive measures are needed and also higher speed on the functioning of the hole system. Of course, also trust is needed among the members and good faith too.

Consumers who face problems with products which ordered from other country of the EU, they have to contact with the ECC-Net of their country. Although, the ECC-Net can provide useful information to consumer for safe exchanges, it cannot represent consumers in front of the Court.¹⁰ For the consumer protection, local organizations such as the trade association, have to inform consumers about the impacts of fake products' trade on the economy, employment and health. So, if consumers are more comparison, they will help to reduce the problem.

The OLAF (European Anti-Fraud Office) examines frauds and, more generally, illegal activities relating mainly to trade. Through its research, it strengthens the work of the European Commission in shaping policies to combat corruption and counterfeiting of trade. After the results of her researches, she comes in contact with the EU institutions and national governments and distributes responsibilities. Its contribution to curbing smuggling is very important but more support and better cooperation is needed in order to re-establish their original use and importance. The 1.2 million counterfeit goods seized in 2014 are the tangible example of the need for immediate intervention and stricter control. Better coordination can be made possible through the action of OLAF.¹¹ "Hercule programme", for example, is one of the OLAF's programs which finance actions to combat any fraud affecting the EU's financial interests. However, these programs need from countries to pay more attention and take seriously their important role.¹²



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