

BRAZIL

1. Nature of the problems

Piracy and counterfeiting: IPR infringements in Brazil are widespread and affect different types of IP rights. Pirated optical disks (music CDs, film DVDs and software) represent a large proportion of the market for the sector. These products are either imported or produced locally and are traded freely and in considerable quantities both in the streets and in shops. There are also reports of counterfeit textiles, clothing and toys as well as counterfeit spare parts and usurpations of EU geographical indications, infringements of designs, etc.

The electronic appliances and equipments sector evokes patent, trademark and design infringements of optical storage products such as CDs and DVDs, blank discs, CD players and DVD players and copyright infringement of software embedded in DVDs blank discs, CD players and DVD players.

Patent and trademark registration: The EU is concerned about the fact that the system put in place by Brazil to grant patents and trademarks has led to a virtual blocking of the process. Brazil has only issued around 1000 patents since the year 2000, out of a backlog of more than 70,000 applications.

The situation is particularly serious in the case of applications for pharmaceutical applications (16,000 to 18,000 out of the total 70,000). In this case, the introduction of a supplementary requirement for patentability - the prior consent from the National Sanitary Agency (ANVISA) is not only of dubious compatibility with TRIPs, but contributes further to the blocking of the patent process.

In the case of trademarks, there are more than 600.000 requests pending, with a delay for obtaining the registration of the title of 6 to 8 years.

2. What is the country doing ?

The Brazilian authorities, notably at federal level, show an increased commitment, notably as a result of domestic and international pressure.

Several political and legislative initiatives have been taken, such as police operations in the tri-border area, conducted in 2005 and leading to important seizures. There are also recent reports that the Patent and Trademark office is increasing its staff in order to improve the functioning of the registration proceedings.

However, while the commitment of the competent authorities has increased, it is also true that IP is portrayed by the government and opinion leaders as a foreign monopoly against the interests of Brazilian people. The Brazilian Government, at a political level, has often declared that, while it considers important the protection of IPRs, it does not consider this matter as a priority in terms of allocated budgetary resources.

At WTO / TRIPs meetings, Brazil is one of the most vocal opponents to the Commission initiative to discuss IPR enforcement problems at the TRIPs Council. In the same *forum* Brazil is however one of the main supporters of enforcement against *biopiracy* (the misappropriation of biodiversity)

3. What needs to be done ?

- ❑ Reinforcement of customs controls in well identified sensitive points (the border region with Argentina / Paraguay, the sea ports of Santos and Parangua) against imports of fake goods originating in third countries. Intensify the police actions undertaken in the “Three borders” region since in 2005.
- ❑ Prevention and repression of sales of counterfeit and pirated goods in shops and street markets.
- ❑ Application of prompt, effective and deterrent criminal penalties for IPR crimes, in particular when executed by criminal organizations.
- ❑ Reduction of the delays for the registration of patents and trademarks, as well as removal of discriminatory requirements for the registration of patents for pharmaceutical products.

4. What can the EU do ?

Commission:

- ❑ will continue to raise the above problems in formal bilateral *fora*, such as the EU-Brazil Joint Committee, as well as in high level meetings and multilateral bodies, insisting that Brazil comply with its international commitments on IPR and enforce them.
- ❑ proposed in the framework of the EU-Mercosur negotiations a detailed chapter with measures to improve IPR enforcement. Brazil rejected them. Should negotiations resume, the Commission will insist on progress in this chapter.
- ❑ repeatedly proposed the setting-up of technical cooperation programmes focusing on enforcement. Brazil has never reacted. . The Commission insists on its offer to cooperate with the Brazilian authorities and share its experience and best practices.
- ❑ included the problems with the registration of patents and trademarks in the EU Market Access Database and regularly monitors the evolution of the situation.