

## **APEC MODEL GUIDELINES TO SECURE SUPPLY CHAINS AGAINST COUNTERFEIT AND PIRATED GOODS**

Counterfeiting and piracy harms commerce and the public well being, and undermines confidence in the quality of brand name products, resulting in billions of dollars of lost revenue, investment, future sales and growth opportunities. It also harms legitimate businesses and workers who play pivotal roles in creating, manufacturing, distributing and selling genuine products. In addition, because infringing products are often substandard in quality, they can harm consumers in a myriad of ways, by for example posing serious health and safety risks. APEC economies, like all economies, are vulnerable to harm when infringing products penetrate the process between the manufacture and sale of goods -- known as business supply chains.

Protecting supply chains from counterfeit and pirated goods requires close public-private sector collaboration. Both must work in concert to identify infringing goods and prevent them from entering the marketplace and international channels of commerce. In this interplay, economies should provide robust frameworks and mechanisms for enforcement of intellectual property rights (IPR) that include transparent and effective administrative and judicial systems and strong border controls. At the same time, businesses should actively endeavor to ensure the security of their production and distribution chains. Indeed, close cooperation between the public and private sectors is essential for effectively securing supply chains and protecting consumers and right holders.

The following model guidelines are intended to aid economies and their private sectors in limiting IPR infringing products from entering the chains of commerce. Specifically, these guidelines outline a set of best practices which can be considered in light of individual circumstances to assist the APEC economies and their private sectors in their efforts to combat counterfeiting and piracy and all those involved in the many links that make up the supply chain.

### **MODEL GUIDELINES**

#### **1. SOURCING OF MATERIALS AND COMPONENT PARTS, AND PROPER DISPOSAL OF UNUSABLE PRODUCTS**

To prevent IPR infringing goods from entering the early stages of the supply chain, suppliers, manufacturers and other business entities are encouraged to consider ways, taking into account local circumstances, to protect themselves from IPR infringement, including making best efforts to ensure that procedures are in place to determine the authenticity of the raw materials and component parts of their products such as:

##### **(a) Verifying the Source of Materials and Component Parts**

- Manufacturers of primary products are encouraged to implement appropriate measures, for example, auditing and monitoring practices, to ensure the authenticity of the materials they purchase. The following are possible illustrations:

## Appendix 6

- Those engaged in the manufacture of pharmaceutical products may consider adopting guidelines that prevent usage of bulk materials not having been verified from a legitimate source.
- Manufacturers of optical disc products may consider having procedures and practices (such as unique identification codes indicating their source of manufacture) in place to verify the legitimacy of their customers.
- Assemblers of products, and right holders where applicable, making best efforts through effective internal oversight and control mechanisms, as are practicable, that counterfeit component parts are not used or integrated into their products.

### (b) Disposing of Damaged or Excess Inventories

- Manufacturers in cooperation with right holders are encouraged to institute policies, where appropriate, to ensure that damaged and unusable products (as well as component parts and unfinished goods) are properly disposed of so they are not blended back into the legitimate supply chain.
- Right holders are encouraged to adopt policies, where appropriate, to ensure that suppliers no longer under contract properly dispose of excess inventories, so those inventories are not blended back into the legitimate supply chain.

## 2. DISTRIBUTING LEGITIMATE GOODS

Once goods are manufactured or assembled, business entities in the supply chain should consider appropriate ways, in the light of local circumstances, to protect themselves from IPR infringement, including taking adequate measures to identify and verify the authenticity of goods entering the market. These measures could include:

### (a) Ensuring the Authenticity of Products Purchased in Various Distribution Channels

- Purchasers (such as retailers, distributors and wholesalers) operating with written procedures designed to guarantee the authenticity and legality of products acquired from distributors.
- Purchasers should be wary of undertaking transactions when the price or terms of sale of the goods are inordinately low or "too good to be true," which might suggest that the goods are not genuine.
- Distributors and right holders cooperating to have procedures and practices in place to verify the legitimacy/reputation of their customers (usually retailers) so as to ensure that IPR infringing goods are not mixed in with genuine goods at the point of sale.

(b) Monitoring Inventories

- Various actors in the supply chain are encouraged to put in place mechanisms, taking into account local circumstances, to monitor their inventories and verify that goods are not counterfeit or pirated through, for example:
  - Provisions in sales contracts; and
  - Protection measures in products or packaging, such as ensuring goods are traceable through known methods such as model or file numbers.

(c) Other Preventive Measures

- To prevent IPR infringing goods from being marketed or distributed, businesses providing information for economies to examine the role trade fairs may play as breeding grounds for infringement and develop steps to stop infringement at these events.
- To make the public aware that the manufacture and the trafficking of counterfeit and pirated products, including the importation and exportation of such products, is illegal and may result in severe civil and/or criminal penalties.

### **3. PUBLIC-PRIVATE SECTOR COLLABORATION AND TRANSPARENCY**

By working with businesses, economies can effectively combat the illicit trade of counterfeit and pirated goods. Such collaboration is essential to curtail trafficking in counterfeit and pirated goods through proper and transparent information exchange, enforcement action and public education campaigns. Steps for achieving this could include:

(a) Facilitating Businesses in Protecting Their Rights

- Economies providing a portal by which right holders and businesses may report suspect counterfeiters and traffickers of counterfeit and pirated goods. Notable examples include the U.S. STOPFAKES hotline at 1-866-999-HALT and [www.stopfakes.gov](http://www.stopfakes.gov).
- Businesses establishing mechanisms by which actionable information may be passed in an expeditious manner to enforcement agencies. In turn, economies also ensuring that the cases are processed in a timely manner.

(b) Coordinating Effective Enforcement and Improving Transparency

- Economies regularly training their enforcement officials on their intellectual property laws and on distinguishing between infringing and genuine products with the aid of businesses where appropriate.

- Economies doing their best to enable their enforcement agencies to effectively share information with one another in accordance with their national laws.
- Economies making public final judicial decisions and administrative rulings of general application pertaining to the enforcement of IPR in accordance with the TRIPS Agreement.

(c) Conducting Joint Public Awareness Campaigns

- Economies together with the private sector undertaking campaigns to inform importers and exporters of the severity of penalties associated with the unlawful trafficking or distribution of counterfeit and pirated goods.
  - Economies together with the private sector undertaking broad educational campaigns that address the harm counterfeiters cause to society and the economy.
  - Economies together with the private sector developing educational programs for consumers and retailers on identifying and avoiding counterfeit and pirated products.
-