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CHALLENGES AND STRATEGIC PRIORITIES IN IP ENFORCEMENT FOR 2026

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ABSTRACT

The challenges of evolving online trade models and fragmented supply chains are continuing to have an impact on traditional approaches to intellectual property (IP) enforcement. Despite progress in terms of institutional capacity and cross-border cooperation, persistent weaknesses remain in relation to cost allocation, trader transparency and oversight of e-commerce and small-parcel flows, particularly within the European Union (EU), where customs seizure volumes are declining. Future enforcement efforts could be strengthened by involving supply chain actors that have real operational control, including transport and logistics providers, online platforms and payment services. There are also practical limitations to current customs practices, in particular the fact that storage and destruction costs are largely borne by rights holders. This contribution explores how existing legal tools could be used more effectively to manage large volumes of small consignments. It also highlights persistent gaps in the verification of online sellers under the EU Digital Services Act, together with the value of stronger business and customer verification, particularly through payment systems. Examples from China and Brazil show how advance shipment data, clearer allocation of responsibilities and public-private partnerships can support more effective enforcement. A practical and cooperative approach to improving enforcement, increasing accountability across supply chains and better protecting consumers is necessary, especially in high-risk areas such as pharmaceuticals, consumer health and automotive products.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

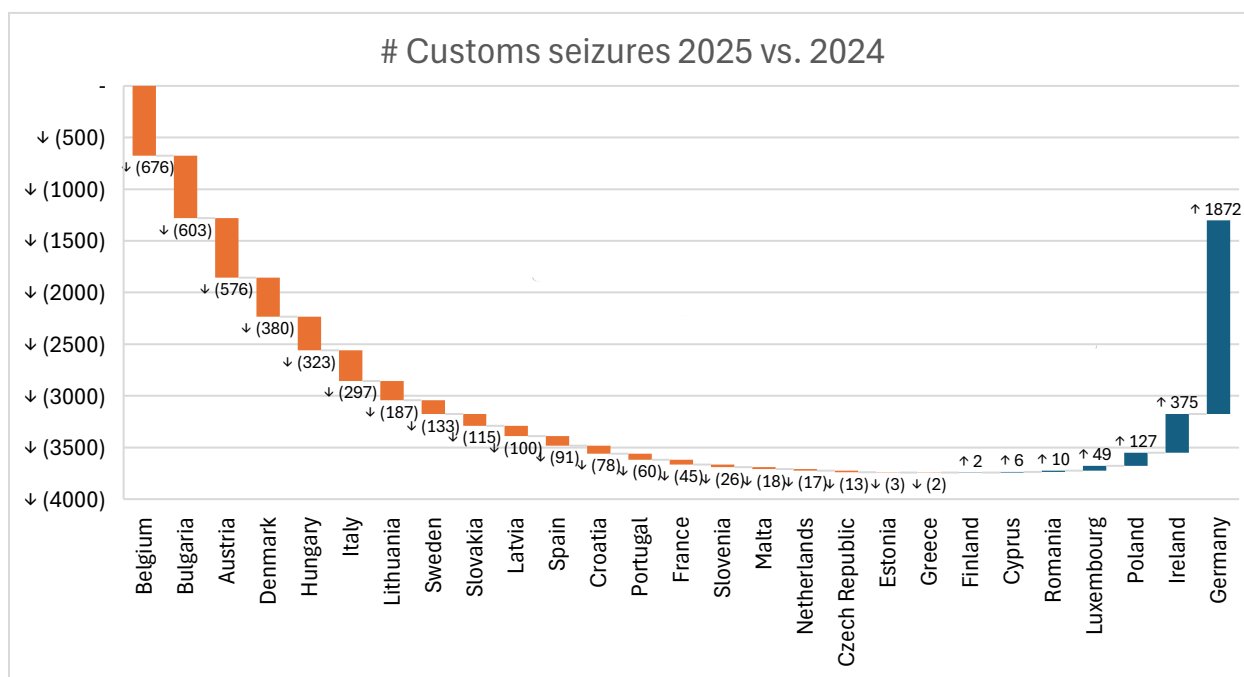
I. INTRODUCTION AND CONTEXT

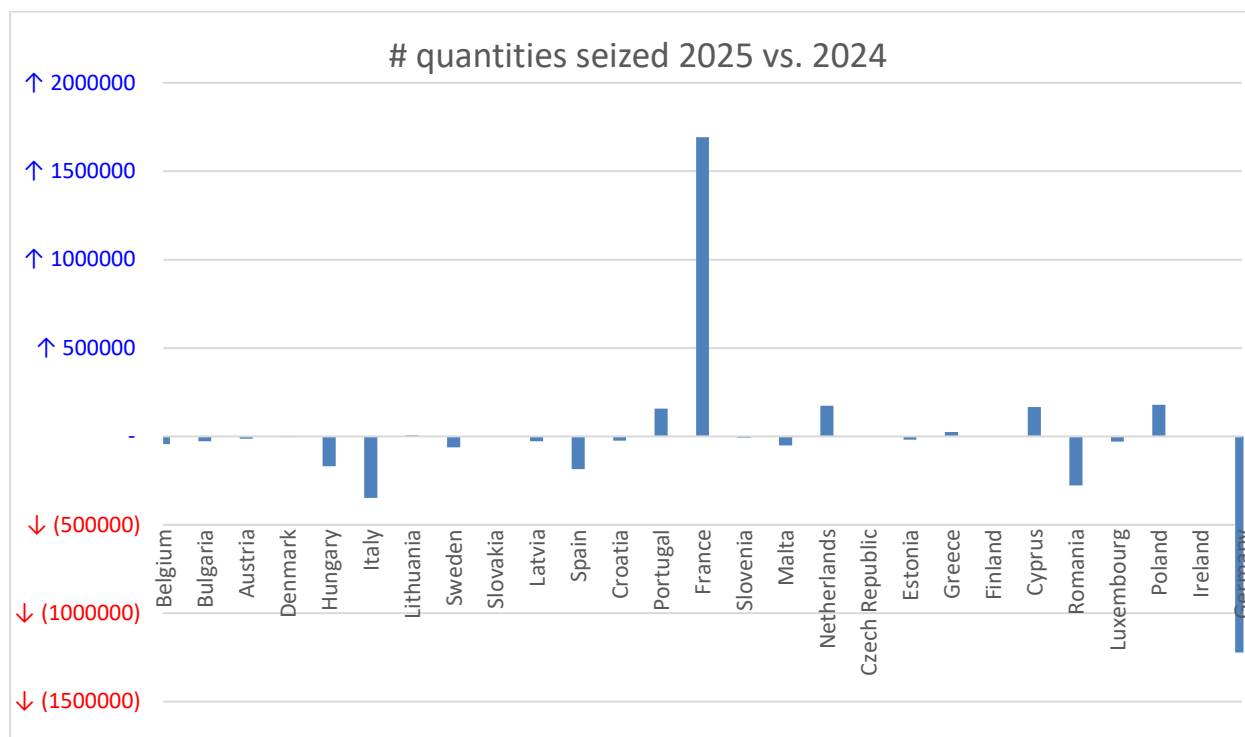
1. Emerging online trade models and increasingly complex supply chains continue to challenge effective IP enforcement. Although institutional capacity and cross-border cooperation have improved in several regions, persistent gaps in cost allocation, online transparency, and e-commerce oversight continue to undermine both rights protection and consumer safety. In Europe, the decline in customs seizures contrasts sharply with stable or rising enforcement activity elsewhere, highlighting the need to rebalance incentives and responsibilities across the supply chain.

2. In 2026, React and its members will prioritize the following: strengthening enforcement ecosystems across customs operations, online marketplaces and small-parcel e-commerce channels by aligning cost responsibility with the actors that possess real control within the supply chain; modernizing “Know Your Business Customer” (KYBC) and “Know Your Customer” (KYC) practices, including stronger integration with payment systems; and expanding public-private partnerships and capacity-building initiatives, particularly in key regions and high-risk product sectors such as pharmaceuticals, consumer health and automotive parts.

II. CUSTOMS ENFORCEMENT

3. Customs enforcement remains one of the most reliable tools for brand protection. Although global initiatives to strengthen customs actions have shown promising results, there has been a decline in customs seizures in Europe, particularly EU member States. This is reflected in the graph below (data from React members only).





4. The decline in customs seizures is largely due to the fact that the burden of storage and destruction costs has been shifted onto rights holders, and to ineffective procedures to manage the high volume of small consignments. Consequently, some rights holders choose to place thresholds and release smaller shipments despite their significance in counterfeit trade.

5. Article 29 of EU Customs Regulation 608/2013 says that rights holders must bear the costs of storage and destruction. Although it also provides the option to reclaim the costs from third parties, this has proved difficult to implement, as such third parties have not been defined. In most cases, the only party known to the rights holders is the customs agent, and the actual recipient of the goods usually remains unknown. The practice of claims against intermediaries is risky and remains in the development stage, proving to be costly and lengthy for rights holders. Customs agents and transporters mostly refuse to disclose the supplier, or they refer to non-existent consignors. The success of such claims also relies on cooperation and information-sharing from the customs authorities.

6. A strategic shift in cost allocation could significantly enhance the effectiveness of the reimbursement process. While the prevailing model typically places the responsibility to cover storage and destruction costs on the rights holder, there is a strong case for exploring a more balanced approach in which the transport and logistics sector takes more responsibility. Given its operational oversight of consignments and contractual influence over importers and suppliers, the transport and logistics sector is well positioned to make a meaningful contribution. Strengthening KYBC practices would not only enhance contractual protections for logistics providers, it would also support rights holders by facilitating clearer identification of responsible parties and minimizing exposure to repeat infringements.

7. The EU Toolbox against Counterfeiting event of March 19, 2024 highlights the growing expectation that the transport and logistics sector should assume a more proactive and responsible role in combating counterfeiting. This includes exercising enhanced due diligence within their KYBC processes and ensuring transparency by disclosing the actual supplier to rights holders when concerns arise. Where such safeguards are not applied, it is considered reasonable that intermediary liability may apply to transport and logistics actors for their potential contribution to the infringement. This would not require a revision of the law but simply

a definition of third parties (Article 29 (2) of Regulation 608) to include transport and logistics intermediaries. Furthermore, this would align with the revised Union Customs Code notion of “deemed importers” for e-commerce platforms and the liability of the customs broker for the importation of non-compliant goods.

8. In this context, it is worth noting the approach taken in China. The export trading companies are held liable if they have shipped illegal goods. Last year, React initiated multiple enforcement actions against export trading companies, resulting in damages claims and compelling the disclosure of manufacturers involved in the production of counterfeit goods.

9. In 2026, React will continue its advocacy efforts to seek legislative clarifications, fair interpretation of existing rules and, where appropriate, strategic litigation to assign costs within the supply chain.

III. ONLINE ENFORCEMENT

10. Online enforcement has matured together with the development of software, use of artificial intelligence and experience of online analysts. Establishing elements like trusted flagger status under the EU Digital Services Act (DSA), has also provided a dedicated channel for rapid platform action.

11. Nonetheless, technical challenges remain. Sophisticated counterfeit networks deploy hidden links, rotate domains and reuse infrastructure across seller accounts. At the same time, platform antibot protections (necessary for user safety) can sometimes block legitimate scanning, slowing the ability of rights holders to detect and collect evidence.

12. Furthermore, trader verification remains one of the key challenges in online enforcement. Depending on the region, platforms may be required to implement protocols and programs for detecting and removing auctions of infringing goods. However, the obligations and provisions are not sufficiently effective in practice.

13. While platforms are required to make “best efforts” to assess reliability of the sellers (e.g. Article 30 of the DSA), they are not required to guarantee accuracy of the information provided. As a result, rights holders are left without effective options when the details of a trader prove to be false or incomplete. Although platforms must collect payment account details under Article 30(1)(c), the DSA does not require robust verification of those details, making it difficult to obtain reliable payment information.

14. Some potential solutions to the above challenges are outlined below.

(a) Upgrading platform level KYC/KYBC from a formal check to a meaningful identity assurance regime: linking trader verification to payment instruments and flows to ensure that the financial rails used to monetize infringement (including payment service providers and acquiring banks) become anchors for persistent identity and accountability.

(b) A simple requirement for traders to make a minor payment transaction, to match the seller with an existing payment account, would significantly strengthen trader traceability. In general, payment service providers have a sophisticated identification process.

(c) Codes of conduct to encourage platforms to implement more robust KYBC practices (e.g. Article 45 of the DSA).

(d) Promotion of a responsible Internet service provider (ISP) scorecard defining best practices for platforms and ISPs.

15. In the context of the above, it is worth exploring the seller verification practices adopted in China: the identification process for Chinese local traders is more structured and stringent than in any other jurisdiction. In China, every trader must hold a valid business license, comparable to the Chamber of Commerce registration requirements in Europe, and e-commerce platforms are legally required to verify this license before allowing the trader to operate. These verified registration details must also be disclosed to consumers and rights holders. It has become a standard practice for IP rights holders to prosecute Chinese traders and summon the e-commerce platform as a witness to confirm the verified business license information of the trader and to disclose detailed sales data for the infringing goods. React collects more damages for its members in China alone than the total sum corresponding to the rest of the world.

IV. E-COMMERCE SHIPMENTS AND SMALL CONSIGNMENTS

16. The issues with e-commerce and customs enforcement are particularly burdensome when it comes to managing small consignments at borders. Volume is too high for customs to inspect, sources are unclear and the regulatory framework is not sufficiently adapted.

17. The future looks more positive with IT developments. Greater use of advance declarations (where feasible and appropriate) would support more effective risk analysis. In parallel, a thoughtful reassessment of how storage and destruction costs are shared, including a more direct role for the transport and logistics sector, could encourage higher levels of compliance across the supply chain and serve as a meaningful deterrent to the circulation of counterfeit goods.

18. The draft Union Customs Code, with its concept of “deemed importers” (e-commerce platforms) and successful initiatives such as the E-commerce Compliance Program in Brazil bode well for the future. Platforms must be more consistent in their KYC programs; pre-select non-compliant goods; improve risk analysis by customs; and ensure fair division of the costs related to the importation of non-compliant goods. Through the implementation of these measures, e-commerce will be cleaner and easier to manage at the borders.

19. The E-commerce Compliance Program in Brazil is a voluntary compliance program for e-commerce platforms shipping goods to Brazil in exchange for tax and customs benefits for participating parties. It demonstrates the effectiveness of targeted measures, representing a good practice for the reduction of illegal shipments.

20. React also aims to support both platforms and customs authorities in managing the anticipated surge in e-commerce imports by assisting with the following:

- (a) the KYC process;
- (b) bulk inspections at the borders;
- (c) the fair allocation of costs; and
- (d) storage and sustainable disposal of fake goods.

21. Public-private partnerships can serve as an ideal solution for extensive scale management and selection of non-compliant e-commerce shipments.

V. CONCLUSION

22. Effective IP enforcement in 2026 depends on aligning responsibilities with the actual points of control in the supply chain, as well as embedding accountability across both digital platforms and physical logistics channels.

23. One priority for React and its members is to seek ways of directing routine storage and destruction costs away from rights holders. Another is to upgrade KYC and KYBC practices so that identity assurance is linked to payment systems, making bad faith actors easier to detect.
24. Enabling pre-arrival risk analysis for small consignments will further strengthen early intervention and help authorities to manage high volume e-commerce flows. In parallel, trusted flagger channels under the DSA, stronger public private partnerships and targeted capacity-building programs can create meaningful improvements for consumer safety and legitimate trade.
25. This issue is particularly relevant for reversing the decline in customs seizures across the EU. It is equally critical for building effective enforcement systems in developing countries where institutional capacity and regulatory frameworks are still evolving. The need is even more acute in high-risk product sectors such as pharmaceuticals, consumer health and automotive parts, where counterfeit goods pose direct threats to public safety.
26. Overall, the outlook remains practical and solutions oriented. With better data, clearer incentives, and shared responsibility across the supply chain, enforcement systems can adapt and keep pace with rapidly evolving infringement models.

[End of contribution]