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IP PROTECTION IN EU'S TRADE RELATIONS WITH THIRD COUNTRIES: IMPLICATIONS FOR TURKEY

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IP PROTECTION IN EU'S TRADE RELATIONS WITH THIRD COUNTRIES: RECOMMENDATIONS FOR TURKEY

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As approximatively 80% of today's intangible trade value is sourced from intellectual property, innovation seems a crucial part of economic growth and an increase in competitiveness. Intellectual property statutes first emerged in international commerce in the 18th century.

Even though we trace sources of intellectual property dating back as far as 600 B.C.¹, the development of a protection law for any sort of creative work is an achievement of the modern world. It is possible to summarise the growing attention for every detail regarding intellectual property leading developed economies to consider its protection and enforcement as essential with two important changes: the growing contribution of creative work to the national GDP and to employment, and the increased economic damage caused by counterfeited and fake products.

In 2008, the Creative Economy Report emphasized that creative industries were engines for economic growth with their diversified scope and impact. With regards to four aspects of the creative industries (economic, social, cultural, and related to sustainable development) the global market, which is dominated by developed countries, has been witnessing a dynamic growth of traded creative goods and services in recent years. Despite this domination, developing countries have tremendously risen their share in that area with a higher growth level compared to that of developed countries.²

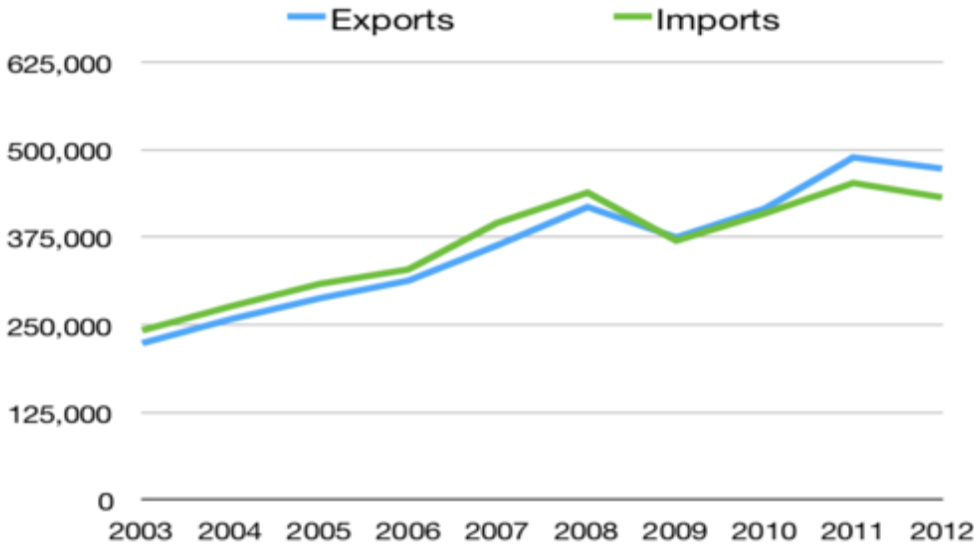
UNCTAD data unveils that in 1996 global trade in the creative industries that include goods and services, was calculated at 227.4 million dollars, whereas the trade volume of creative goods solely (without services) reached 509 billion dollars in 2019. Given the rising volume of value and positive impact on the economy of the creative industries, failing to protect innovative ideas from counterfeiting and piracy creates a drain on the economy due to its hundred-billion-dollars of damage. Consequently, studies while warning about the growing risk and trying to increase awareness of economic and social damage caused by counterfeiting and piracy, it is forecasted that if the trend continues as it is today, in 2022 trade in counterfeit and pirated goods could reach to 991 billion dollars, along with up to 5.4 million jobs lost.³

¹This date is revealed according to research of British intellectual property expert Robin Jacob. For further reading: Reuters, Matt Kwong, 04.11.2014, "Six significant moments in patent history", <https://www.reuters.com/article/us-moments-patent-idUSKBN0IN1Y120141104>

² For further reading: International Trade Forum Magazine, The Quarterly Magazine of International Trade Centre, "Creative Economy: A Dynamic Sector in World Trade" Issue 3, 2009, <http://www.cottonguide.org/creative-economy-a-dynamic-sector-in-world-trade/>

³ International Chamber of Commerce, "The Economic Impacts of Counterfeiting and Piracy - Report prepared for BASCAP and INTA", <https://iccwbo.org/publication/economic-impacts-counterfeiting-piracy-report-prepared-bascap-inta/>

Figure 1: Global Change in Exports and Imports of Creative Goods According to UNCTAD Data (million dollars) ⁴



With the adoption of the Trade Related Aspects of Intellectual Property (TRIPS) Agreement in 1995, ideational property, and its place in international trade has been discussed and developed around the fear among inventors: A fear that the original idea would be stolen had been preventing inventors from presenting new technologies or innovative ideas, especially at the international level. Accordingly, regulations for embedding intellectual property rights into policies and normative values were emerging.

According to World Intellectual Property Organization (WIPO), intellectual property is defined as “creations of the mind such as inventions; literary and artistic works; and symbols, names and images used in commerce that is divided into categories of copyright and industrial properties”⁵. Article 27 of the Universal Declaration of Human Rights of 1948 defines intellectual property rights (IPR), providing moral and material interest protection for the owner of an original idea or production against any sort of exploitation.

As of today, still one of the issues and challenges concerning protections of IPR focuses on its enforcement at the international level. Since the TRIPS Agreement entered into force on 1 January 1995, and signed by World Trade Organization (WTO) members, IPR protection has gradually gained importance on international trade negotiations. One of the best ways to observe that change is to focus on how IP norm making is undertaken within the EU under its so-called new generation FTAs, as the EU is the greatest creative industry goods and services exporter in the world, hence giving a great importance to expanding its international reach⁶. So, the focus of this research will be on the ways IPR is

⁴UNCTAD, “Creative Economy Outlook and Country Profiles: Trends in international trade in creative industries https://unctad.org/system/files/official-document/webditcted2016d5_en.pdf

⁵WIPO, “What is Intellectual Property?”, https://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

⁶European Commission, “Communication on Promoting cultural and creative sectors for growth and jobs in the EU”,

undertaken by the EU within recent trade agreements; namely, new generation free trade agreements (FTAs) and economic partnership agreements (EPAs). The definition of “new generation FTAs” was first defined in “Communication on Global Europe: Competing in the World,”⁷ as describing the comprehensive nature of their scope, when the EU was negotiating trade deals with South Korea, India and ASEAN.

With the entry in force of the EU-South Korea FTA in 2011, new generation FTAs have also entered into scope of the EU’s bilateral trading relations. Along with a more comprehensive structure, with new sectors to align between the parties, new generation FTAs basically seek to tackle current challenges regarding digital innovation, environmental issues and inclusive growth. On the other hand, EPAs are not FTAs in the classic sense, but are agreements specifically focused on fostering development in a partner country, taking its sources from the Cotonou Agreement signed in 2000. These two kinds of trade agreements are at the centre of this article due to their special emphasis on the establishment and protection of IPR. The EU-Korea FTA was the first trade agreement in which a comprehensive chapter on IPR alignment was covered and considered as one of the most important pillars of the agreement.

Table 1: Overview of the New Generation FTAs of the EU Entered into Force⁸

Partner	Applied since
EU-South Korea Free Trade Agreement	1 July 2011
EU-Colombia-Peru-Ecuador Trade Agreement	1 March 2013 for Peru; 1 August 2013 for Colombia; 1 January 2017 for Ecuador
EU-Central America Association Agreement	1 August 2013: trade pillar applies with Honduras, Nicaragua and Panama; 1 October 2013: Costa Rica and El Salvador; 1 December 2013: Guatemala
EU-Canada Comprehensive Economic and Trade Agreement (CETA)	21 September 2017
EU-Singapore Free Trade Agreement	21 November 2019
EU- Vietnam Free Trade Agreement	1 August 2020

https://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2012/0537/COM_COM%282012%290537_EN.pdf

⁷ European Commission, “Global Europe: Competing in the World: A Contribution to the EU's Growth and Jobs Strategy”, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF>

⁸European Commission, Negotiations and Agreements, https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place

Table 2: Overview of the EPAs of the EU Entered into Force

<i>Partner</i>	<i>Applied Since</i>
<i>EU-CARIFORUM</i>	29 December 2008
<i>EU-SADC</i>	10 October 2016 for Botswana, Eswatini, Lesotho, Namibia and South Africa; 4 February 2018 for Mozambique
<i>EU- Pacific Countries</i>	20 December 2009 for Papua New Guinea; 28 July 2014 for Fiji, 31 December 2018 for Samoa
<i>EU-Cote d'Ivoire (interim)</i>	3 September 2016
<i>EU-Eastern and Southern African States (interim)</i>	14 May 2012 for Madagascar, Mauritius, Seychelles and Zimbabwe, 7 February 2019 for Comoros
<i>EU-Ghana (interim)</i>	15 December 2016
<i>EU-Cameroon</i>	4 August 2014
<i>More Comprehensive EPAs known as Global Agreements</i>	
<i>EU-Mexico Global Agreement</i>	into force since 2000 and agreed in principle to modernise in April 2018
<i>EU-Japan EPA</i>	1 February 2019

IPR in the Context of EU's Bilateral and Multilateral Level Trade

According to 2016 data, 80% of EU imports and 82% of EU exports were generated by IPR-intensive industries.⁹ Moreover, their contribution to the EU's GDP accounts for 44.8%, generating %38.9 of the total employment.

While describing IP systems as a key component in promotion of growth and innovative investment and research, the EU also emphasizes the increasing challenges to protect them against an online environment which allows and facilitates proliferation of IP-infringing goods and content much wider and quicker than ever.

Multiple research reveals that the contribution of IPR-intensive industries has gradually increased since the financial crisis in 2008, whereas the remuneration in IPR sectors tends to be higher than non-IPR industries, making them a more attractive work environment for employees. Indeed, it is calculated that the remuneration in all IPR-

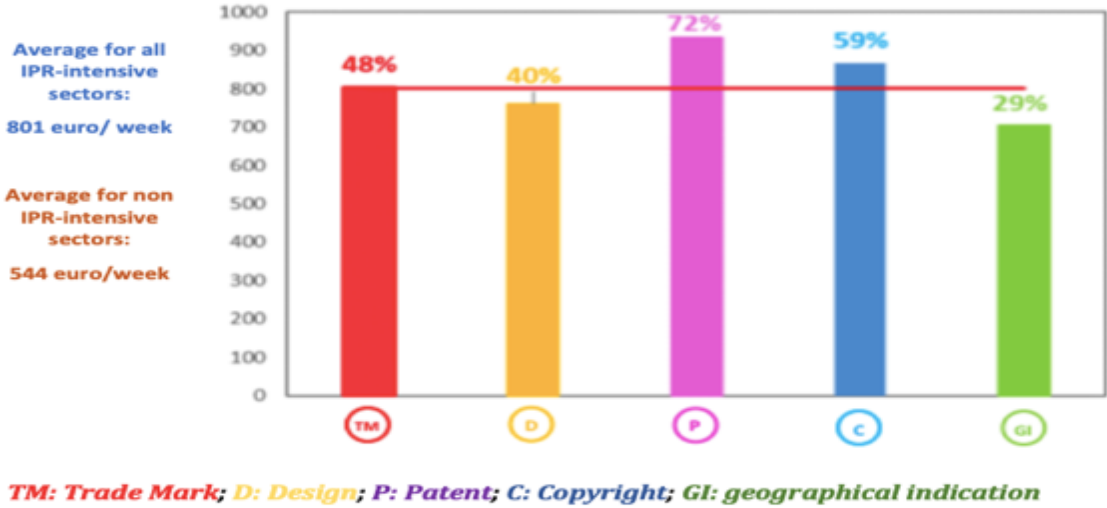
⁹ European Commission, "Report on the protection and enforcement of intellectual property rights in third countries", 08.01.2020, https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf

intensive sectors is 47% higher than the others.¹⁰ Additionally, studies emphasize the fact that IPR-intensive industries are more resilient during adverse economic conditions than other sectors.¹¹

Table 3: Contribution of IPR-intensive industries to EU employment, GDP and trade (2016)¹²

Share of all IPR industries in total employment	Share of all IPR industries in total GDP	Share of all IPR industries in total exports	Share of all IPR industries in total imports
38.9%	44.8%	82%	80%
83,807, 505 persons	6.552 trillion euros	2.122 trillion euros	1.940 trillion euros

Figure 2: Remuneration difference by percentage in IPR-intensive sectors in comparison with non-IPR- intensive sectors in the EU (2016)¹³



¹⁰ EUIPO, June 2020, “2020 Status Report On IPR Infringement: Why IP Rights are important, IPR infringement, and the fight against counterfeiting and piracy”, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2020_Status_Report_on_IPR_infringement/2020_Status_Report_on_IPR_infringement_en.pdf

¹¹ European Patent Office-EUIPO, “Intellectual property rights intensive industries and economic performance in the European Union”, Industry-Level Analysis Report, October 2016, Second edition, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf

¹² European Commission, “Report on the protection and enforcement of intellectual property rights in third countries”, 08.01.2020, https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf, Table 1 and Table 2 p. 4,5.

¹³ EUIPO, June 2020, “2020 Status Report On IPR Infringement: Why IP Rights are important, IPR infringement, and the fight against counterfeiting and piracy”, ‘Figure 2: Average remuneration in IPR-intensive industries compared to non-IPR-intensive industries, 2016’, p.10, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2020_Status_Report_on_IPR_infringement/2020_Status_Report_on_IPR_infringement_en.pdf

Furthermore, the European Commission considers IPR as remuneration for creators or investors in creative works and an instrument to guarantee the sustainability and capacity development in innovation and research. Hence, high copyright protection and enforcement standards are one of the regulations that the EU is looking for in its trade partners. This is also emphasized in the “Trade, growth and intellectual property” report¹⁴, published biannually since 2006, lastly dated in 2018, that it aims to further strengthen the protection and enforcement of intellectual property rights in third countries which the EU has or is keen to develop trade relationships with. Also, as a part of these efforts, the Commission indicates a list of third countries as “priority countries” in which concerns over the protection and enhancement of IPR are rising.

In implementation of free trade agreements while taking TRIPS Agreements standards as minimum requirements to fulfil, the EU seeks also to enhance IPR protection at digital platforms, within both its Member States and third countries. With Single Market Strategy and Digital Single Market Strategy announced on 29 November 2017¹⁵ by the Juncker Commission, a comprehensive package of measures to further protect IPR and to emphasize the need for the fight against counterfeiting and piracy both online and offline was adopted. A set of communication and evaluation reports seeks to cover every detail of IPR application and enforcement, from the roles of public authorities, to the ways of fighting possible infringements, both internally and internationally.

Concerning trade relations with third countries, the EU focuses on the alignment of IP rules as much as possible, while taking into account its partner’s level of development. With its new generation FTAs and EPAs, the EU adds a comprehensive chapter on IPR regulations in a bid to protect its innovators and users but also as a tool to improve judicial, normative and administrative infrastructure in the subject country.¹⁶ Gathering IP working groups and IP dialogues is another activity of the EU to engage more with the third country on the issues and resolve current and potential problems.¹⁷ In general, chapters in EU’s trade agreements that specify IPR protection and enforcement, put forward provisions on copyright, trademarks, patents, geographical indications, patents, designs, civil enforcement provisions as well as minimum common rules for regulatory test data protection for pharmaceuticals.

Another important point about the strict relationship between trade and IPR protection, is “the exhaustion principle”, which is aimed at balancing free trade and IP protection. But the fact that this exhaustion principle also has an element of “territoriality”, meaning that

¹⁴ European Commission, Communication ‘Trade, growth and intellectual property’, COM(2014) 389 and European Commission, Communication ‘A balanced IP enforcement system responding to today’s societal challenges’, COM(2017) 707, <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-707-F1-ENMAIN-PART-1.PDF>

¹⁵ https://ec.europa.eu/growth/industry/policy/intellectual-property_en

¹⁶ Gervais D., 2014. “Current Issues in International Intellectual Property Norm-Making”, in J. Drexler et al. (eds), *EU Bilateral Trade Agreements and Intellectual Property: For Better or Worse?*, MPI Studies on Intellectual Property and Competition Law 20, DOI 10.1007/978-3-642-39097-5_1

¹⁷ European Commission, EU dialogues with priority countries on intellectual property issues, https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151009.pdf

every country has the right to decide on its rules, could be an important “non-tariff barrier” for inventors and investors to export their works. Although, various international agreements focus on establishing common rules, such as the Uruguay Round of the General Agreement on Tariffs and Trade and the TRIPS Agreement, countries tend mostly to apply territorial principles.¹⁸

Moreover, patent policies, especially in the biotechnology sector, alongside their complicated nature, could dissuade non-residents from entering into business. A diversity in patent policies, and the fact that IPRs are granted in a specific territory independently from other states, leaves the owners and inventors with multi-layered and complex procedures to obtain rights of first sale and of exportation to a different territory. The fact that countries in the EU apply strict rules of exhaustion in a way to protect its economy and free trade also adds an element of barrier depicted as “non-tariff” for third countries, aimed both at protecting their own businesses but also at forcing the third countries to align their procedures with the EU in IP related areas.

Top Concerns Regarding IP Protection

The link between IPR and development policies, and thus with Development Theory, according to which infrastructure import from developed economies is crucial for developing countries to reach a higher level of socio-economic growth, is one of the matters of debate in today’s current discussions. Therefore, as embedded in the TRIPS Agreement (Article 7), technology transfer from developed countries to less developed countries in a bid to “*contribute to the promotion of technological innovation, ... to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations,*” is one of the areas that the most of IPR regulations focus on. Moreover, Article 66.2 of the TRIPS emphasizes the “obligation” of developed economies to provide incentives to facilitate the technology transfer to mostly benefit the least developed countries.

Alongside the transfer of technology, geographical indications (GIs) and pharmaceuticals occur at the top of the EU’s concerns vis-à-vis inadequate protection of IP in its trade with third-world countries. According to recent data¹⁹, agri-food and drink products as “geographical indications” (GIs) in the EU, represent a sales value of 74.76 billion euros. Regarding pharmaceuticals, the EU’s trade surplus in 2019 has been calculated as 109.4 billion euros thereby making this sector the largest high-tech sector contributor to EU’s trade.²⁰ More than 30 international agreements concluded by the EU include GIs in order to guarantee their recognition at the international level and protect them against the

¹⁸ For further reading: “Exhaustion of Intellectual Property Rights: A Non-Tariff Barrier to International Trade?”, <https://dergipark.org.tr/en/download/article-file/6340>

¹⁹ European Commission, “Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs)”, 08.04.2020

²⁰ Eurostat, International trade in medicinal and pharmaceutical products, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_medicinal_and_pharmaceutical_products&oldid=476606

increasing number of violations. To this aim, the European Commission has allocated a total of 200.9 million euros in promotion of EU agri-food products in 2020 alone.²¹ In addition to deep FTAs and EPAs in which the parties negotiate on bilateral recognition of GIs, as well as other IPR issues, agreements specifically negotiated on GIs are possible such as the EU-China trade agreement on GIs signed on 9 July 2020.²² Moreover according to recent data GIs represent a sales value of 74.76 billion euros, approximatively 7% of the total sales value of the European food and drink sector estimated at €1.2 billion in 2019. Directly linked to this main importance in production and trade, food and beverage sector is one of the most exposed to counterfeiting and fraud. According to estimation of the European Commission food fraud causes to the EU around 8 to 12 billion euros per year.

Moreover, according to recent data, GIs represent a sales value of 74.76 billion euros, approximatively 7% of the total sales value of the European food and beverage sector estimated at €1.2 billion in 2019.²³ Directly linked to their crucial importance in the economy, the food and beverage sector is one of the sectors most exposed to counterfeiting and fraud. According to an estimation of the European Commission, food fraud causes around 8 to 12 billion euros per year.²⁴

Research published by EUIPO in 2016, indicates that counterfeit medicines in the internal market turns into 10.2 billion euros of annual revenue loss (amounts to 4.4% of sales) in the sector plus 7.1 billion euros of loss in related sectors.²⁵ In addition to economic and health-related problems posed by fake medicines, a lack of affordability and availability of medicines in low and middle-income countries also creates a complex healthcare ecosystem. Therefore, IP regulations and provisions regarding pharmaceuticals in bilateral trade negotiations burdens developing economies, such as the EU itself, since IPR is considered one of the instruments to establish necessary infrastructure for sustainable development goals in less developed countries. In this case, it is directly related to SDG 3 “ensure healthy lives and promote well-being for all at all ages.”²⁶ On the other hand, it is necessary for the EU, the biggest medicine supplier in the world, to protect its internal market against fake medicines and international interests of its inventors and investors.

²¹ European Commission, Promotion of EU farm products, https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/promotion-eu-farm-products_en

²² <https://www.consilium.europa.eu/en/press/press-releases/2020/07/20/eu-china-council-authorises-signature-of-the-agreement-on-geographical-indications/>

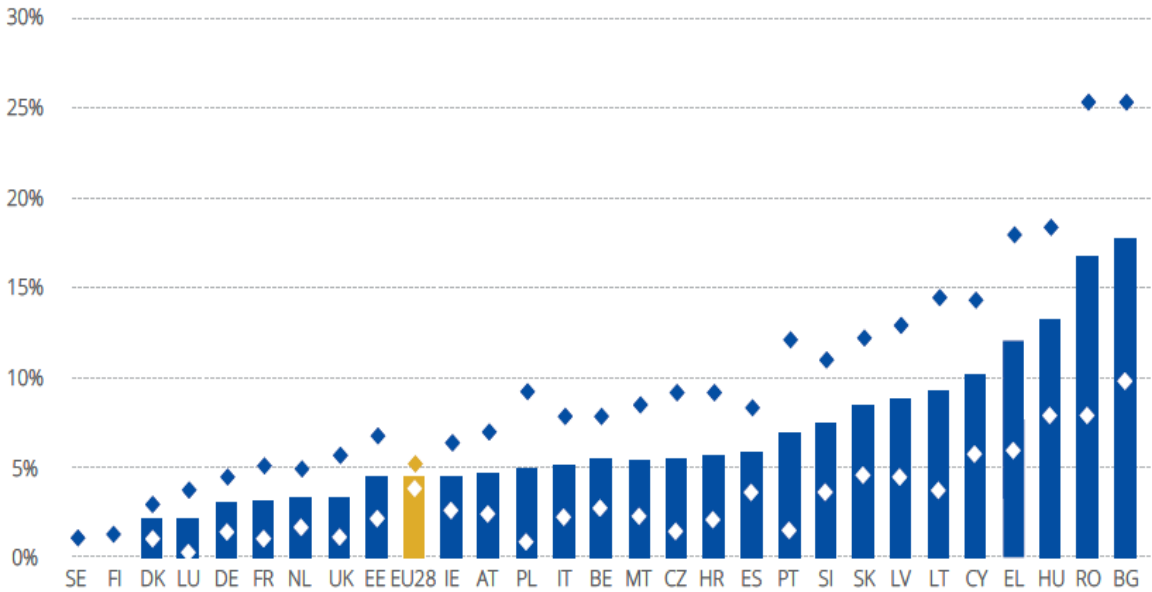
²³ Data and Trends: EU Food and Drink Industry 2019, https://www.fooddrinkeurope.eu/uploads/publications_documents/FoodDrinkEurope_-_Data_Trends_2019.pdf

²⁴ European Commission, Food Fraud, https://ec.europa.eu/knowledge4policy/food-fraud-quality/topic/food-fraud_en#:~:text=Economically%20motivated%20adulteration%20of%20food,food%20they%20choose%20to%20purchase.

²⁵ EUIPO, “The Economic Cost of IPR Infringement in the Pharmaceutical Industry”, https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study9/pharmaceutical_sector_en.pdf

²⁶ United Nations, Department of Economic and Social Affairs Sustainable Development, The 17 Goals, <https://sdgs.un.org/goals>

Figure 3: The estimated total counterfeiting effect in pharmaceuticals sectors in the EU and Member States²⁷ (Annual average of 2008-2013)



Turkey: A Priority Country Concerning IPR Enforcement with a High Level of Alignment

Regarding the EU’s efforts on IPR protections with third countries, China is positioned as the number one priority on the list in which Turkey ranks as a second priority country, along with India, Indonesia, Russia and Ukraine. Argentina, Brazil, Ecuador, Malaysia, Nigeria, Saudi Arabia and Thailand are in the third category of countries with which the EU is considering alignment to further IPR issues.

Turkey implements a different exhaustion regime than the EU (also known as the first sale rule), which creates problems in the free movement of goods despite the Customs Union between the parties. Moreover, a study jointly prepared by the European Union Intellectual Property Office (EUIPO) and OECD in 2018²⁸, Turkey is listed among three top source countries regarding counterfeit and pirated goods traded worldwide. On the other hand, Turkey is not only a country producing fake articles of leather, handbags, clothing and textile fabrics but is also a key transition point for counterfeit electronic and electrical products into the EU from other third countries.²⁹

²⁷EUIPO, “The Economic Cost of IPR Infringement in the Pharmaceutical Industry: Quantification of infringement in Manufacture of pharmaceutical preparations (NACE 21.20)” September 2016, https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study9/pharmaceutical_sector_en.pdf , p. 15

²⁸ OECD-EUIPO, “Trade in Counterfeit Goods and Free Trade Zones Evidence from Recent Trends”, <https://www.oecd.org/gov/trade-in-counterfeit-goods-and-free-trade-zones-9789264289550-en.htm>

²⁹ European Commission, “Report on the protection and enforcement of intellectual property rights in third countries”, 08.01.2020, https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf , p. 30

Although the fact that Turkey is among the top producers of counterfeit products such as perfume, accessories, cosmetics, beverages and clothing, the level of alignment concerning copyright and industrial property rights with the EU was found at a high level. Accordingly, as a candidate country pursuing accession negotiations with the EU since 2005, Turkey reveals a good level of preparation in IPR alignment with the EU.³⁰ Intellectual property law has been dealing under Chapter 7 and was opened to negotiation since 17 June 2008. As one of the 16 chapters open to negotiation, intellectual property law comes to the fore, in which concrete alignment procedures are working and Turkey has been showing steady progress albeit limited.

In addition, as a country ranked second priority in EU's efforts to enforcing IP protection due to intense trade relations and business networks, Turkey has been encouraged to improve enforcement measures to combat industrial and intellectual property infringements, and increase awareness of the damage caused by counterfeiting and piracy. The European Commission stressed once again the strong relationship between IPR protection and economic growth, recalling for a new IPR strategy to be put in place instead of the one which expired in 2018.

The report "On the protection and enforcement of intellectual property rights in third countries"³¹ indicates that Turkey replaced the national exhaustion principle with the international exhaustion principle following the entry into force of the Industrial Property Code of 2017. As a country in a customs union on industrial goods with the EU, the international exhaustion principle allowing liberalised parallel imports creates problems for EU right-holders because it prevents them from being able to control the exploitation. That issue has been evaluated as a crucial problem in the Turkey-EU Customs Union, deteriorating EU's IP protection, and the European Commission called on Turkey to align its exhaustion regime with the EU.

According to UNCTAD³² data, since 2008 Turkey has been one of the top 20 key players in the global market for creative good exportation by ranking at 16th.³³ As of the trade performance, Turkey was able to triple its exports between 2005 and 2104, whereas design goods and art crafts accounted for the largest share. One of the remarkable points of Turkey's creative good trade is consistence in positive trade balance, which is calculated 5.68 billion dollars in 2014.

Recently, global innovation Index (GII) 2020 published by WIPO³⁴ ranked Turkey in 51st place among 131 economies, underlining that the country performed below expectations

³⁰ For further information : "2020 Turkey Report of the European Commission",

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

³¹ European Commission, "Report on the protection and enforcement of intellectual property rights in third countries", 08.01.2020, https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf , p. 29

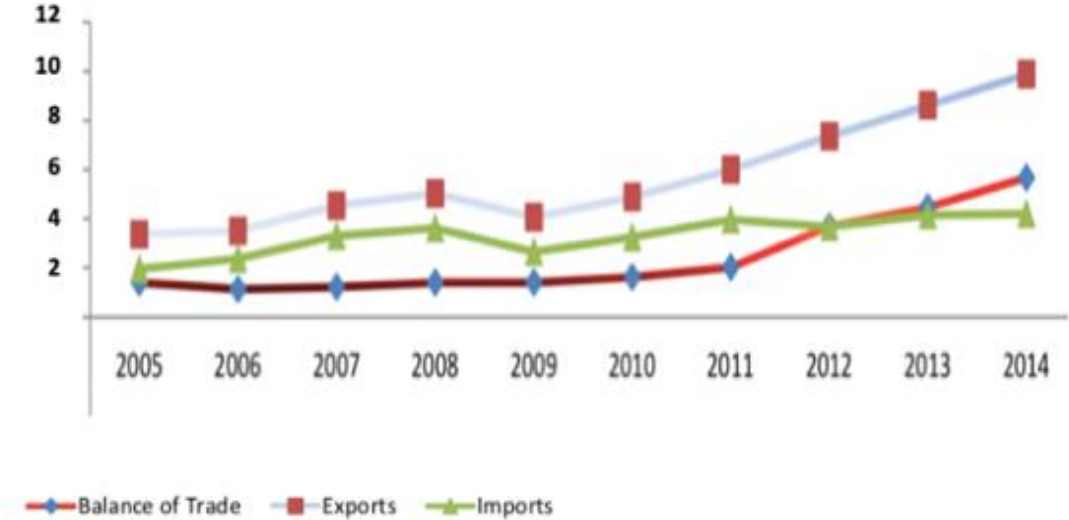
³² United Nations Conference on Trade and Development

³³ UNDP, UNCTAD, "Creative Economy Report 2010", p. 132, Table 5.6: "Creative goods: Top 20 exporters worldwide, 2002 and 2008".

³⁴ https://www.wipo.int/edocs/pubdocs/en/wipo_pub_gii_2020/tr.pdf

comparing to its level of development. The Innovation Index consists of seven pillars and 80 indicators, aimed at measuring countries' innovation capabilities.

Figure 4: Creative Economy Trade Performance 2005-2014 of Turkey (billion dollars) ³⁵



Turkey’s vision for 2019-2023 on strengthening IPR legislation and protection against any sort of theft was also included in the Eleventh Development Plan³⁶ published in 2019, which subsequently described a public willingness to develop an ecosystem that supports creative work by improving incentives.

As a matter of fact, since 2010, the Turkish ecosystem has been marked by its growth rate in importance and size, which today has become a regional start-up hub, thanks to its capacity to attract new capital and angel investors carrying out their first investments. In 2010, the Turkish start-up ecosystem had attracted annual investments of 100 million dollars, while in the first half of 2020 the entrepreneurial ecosystem reached 1.860 billion dollars, according to KPGM's report titled “Turkish start-up Investment Review.” ³⁷

Besides, the Turkish ecosystem achieved significant success in June 2020, with the purchase of the Turkish game company "Peak Games" for 1.8 billion dollars by the American game company "Zynga Inc." Run by a team of 100 young people with an average age of 29, Peak obtained a remarkable success and became Turkey's first “unicorn.” A unicorn is described as a private start-up valued at over 1 billion dollars. With this acquisition, Zynga Inc. stated that they hope to grow their audience by 60%, especially at a time when entertainment services are limited due to coronavirus restrictions. Also, in

³⁵ UNCTAD, “Creative Economy Outlook Trends in International Trade in Creative Industries 2002–2015, Country Profiles 2005–2014”, https://unctad.org/system/files/official-document/ditcted2018d3_en.pdf

³⁶ Presidency of the Republic of Turkey, Presidency of Strategy and Budget, “Eleventh Development Plan (2019-2023)”, https://www.sbb.gov.tr/wp-content/uploads/2020/06/Eleventh_Development_Plan-2019-2023.pdf, p. 113- 117.

³⁷ KPGM, “Turkish startup Investment Review Q3 2020”, <https://assets.kpmg/content/dam/kpmg/tr/pdf/2020/11/turkish-startup-investments-review.pdf>

August 2020, Zynga Inc. purchased the Turkish game company, “Rollic Games” for 168 million dollars.

Along with Peak's unicorn success, which has inspired many tech start-ups, at the same time, Turkey has moved up on the Digital Transformation Index. According to a report released by the Turkish IT Industry Association (TÜBİSAD) on 9 June 2020³⁸, Turkey's digital transformation score reached 3.06 out of 5 in 2020, up from 2.94 last year. Even though the improvement in Turkey's digitalisation score is not yet reflected in the global ranking, the fact that public and private start-up acceleration programs in Turkey increased 8 times between 2010 and 2019, passing from 6 to 57, presents an environment favourable to innovation and technological initiatives.

Moreover, representing Europe's youngest population, Turkey also ranks 7th among the top 34 upper-middle-income economies in the 2019 Global Innovation Index, in which human capital, research, and creative products are the main characteristics of the country.³⁹

Long Term Vision of the EU on IP Policy

Recently, on 10 November 2020, the Council of the EU adopted conclusions regarding the future of the EU's IP policy, emphasising the significance of a “strong, efficient, transparent and balanced system of IP protection.” At a time when the presentation of the von der Leyen Commission's Action Plan on intellectual property was pending, the Council articulated its approach, calling for an improvement in the fight against counterfeiting and piracy as well as the revision of the legal framework on industrial design protection.⁴⁰ Recalling its conclusions in “An EU Industrial Policy Strategy: A Vision for 2030”⁴¹ of May 2019, which stressed a well-functioning and effective IPR regime as key to continued development and growth, the Council suggested revisions concerning simplification of the procedures managed by EUIPO as well as improvement in design protection.

As recalled in the Council document, on 10 March 2020, the Commission published a Communication entitled “A New Industrial Strategy for Europe,”⁴² which was embedded in the European Green Deal and Digital Europe priorities. Depicting the mainstream objectives and actions needed to be taken in the coming years to obtain an industrial transformation that will pave the way for green, digital, and globally competitive sector, the Industrial Strategy underpins an action plan to upgrade the legal framework of the EU's IPR. This aim is explained by the central role of IPR in Europe's tech sovereignty and

³⁸ TÜBİSAD, “Turkey's Digital Transformation Index 2020”, 09.06.2020, http://www.tubisad.org.tr/tr/images/pdf/tubisad_dde_endeks_report_eng.pdf

³⁹ Presidency of the Republic of Turkey Investment Office, “The State of Turkish Startup Ecosystem 2020: An In-Depth Analysis and Evaluation” , <https://www.invest.gov.tr/en/library/publications/lists/investpublications/the-state-of-turkish-startup-ecosystem.pdf>

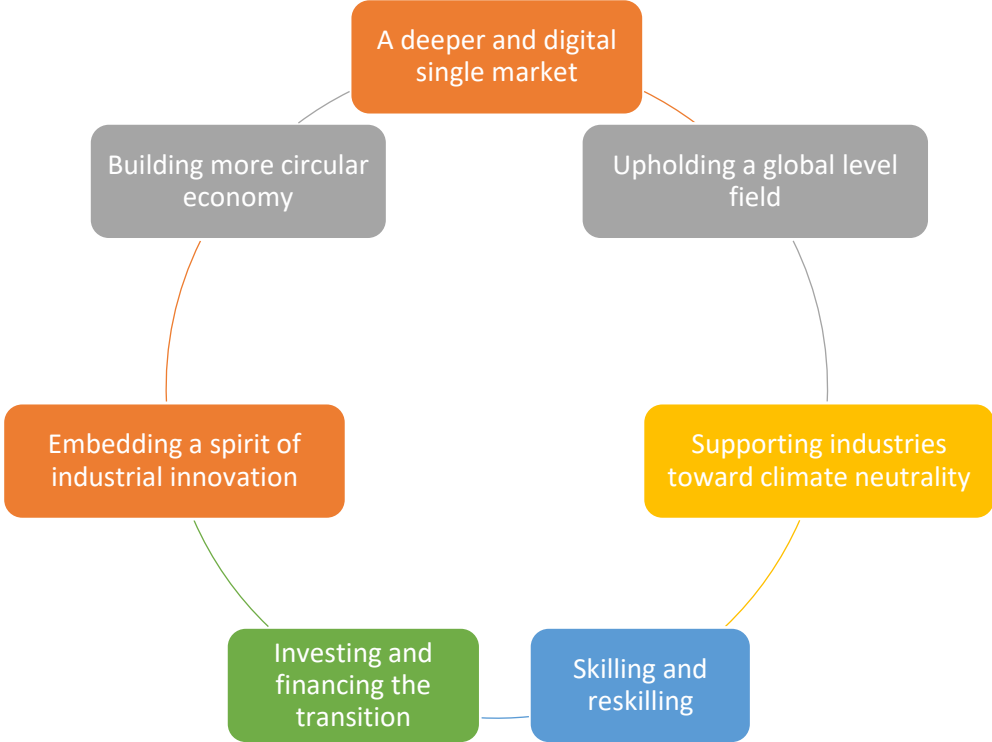
⁴⁰ Council of the EU, “Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union”, <https://www.consilium.europa.eu/media/46671/st-12750-2020-init.pdf>

⁴¹ Council of the EU, “An EU Industrial Policy Strategy: a Vision for 2030” - Council conclusions (adopted on 27/05/2019) <https://www.consilium.europa.eu/media/39507/st09706-en19.pdf>

⁴² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0102&from=EN>

trade competitiveness. Not only boosting the creativity but also protecting original works from counterfeiting and piracy within and abroad is established as the main reason why the European institutions set forth improvement in IP legislation.

Figure 5: Fundamental factors in achieving industrial transformation in the EU⁴³



Along with the Council's conclusions and Commission digital and green priorities stressing further enforcement of IPR as a key element to increase global competitiveness and added economic value, suggestions, and comments of the European Economic and Social Committee (EESC) has given shape to the scope of the IP Action Plan, which was published by the European Commission on 25 November 2020. "Digitalisation: Challenges for Europe,"⁴⁴ a report published by the EESC in March 2019, written in three chapters, considers in detail the fundamental steps that need to be taken in different policy areas in a bid to achieve a "digital society." Among one of the crucial subtitles depicted paving the way for the creation of the digital society IPR has also been ranked, however with a focus on its protection and enforcement in third countries.

When on 25 November Commission published the long-awaited action plan on IP entitled "Making the most of the EU's innovative potential: An intellectual property action plan to support the EU's recovery and resilience" indicating the middle and long-term priorities

⁴³ European Commission, Factsheet "A European Industrial Strategy: A New Industrial Strategy for a globally competitive, green and digital Europe", https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en

⁴⁴ EESC, "Digitalisation: Challenges for Europe", March 2019, <https://www.eesc.europa.eu/sites/default/files/files/qe-01-19-295-en-n.pdf>

of the EU⁴⁵, it announced five key measures regarding IP-intensive industries that account for 45% of the European GDP, as well as 93% of all EU exports according 2019 data.⁴⁶ These key measures stipulated in the Action Plan were designed in a way to respond to the five challenges identified by the European Commission.

Table 5: Five Challenges and Key Focus Areas Described in the IP Action Plan

Challenges Facing the European IP System	Key Focus Areas that will Address Challenges
Largely fragmented IP system with procedures that are complex, costly and sometimes lacking clarity	upgrade the system for IP protection
A small group of SMEs and researchers fully benefiting from IP protection	incentivise the use and deployment of IP, notably by SMEs
Tools insufficiently developed to facilitate access to IP	facilitate access to and sharing of intangible assets while guaranteeing a fair return on investment
The threat of counterfeiting and piracy	ensure better IP enforcement
Lack of fair play at global level	improve fair play at global level

Conclusion

IPR are embedded into policies not only to protect individual research and innovation work, but also to boost a country's economic development as well as social and cultural wellbeing. Moreover, IPR set out a growing importance of mitigating current challenges facing tangible or intangible high added value goods and services at the international level, thus making IP regulations a crucial part of trade negotiations, both to protect internal interests and to export necessary infrastructure for socio-economic development in third countries. Defining geographical and thematic priorities to classify third countries based on the level of economic harm to EU companies, the EU decides its methods of negotiations and brass-tacks regarding IP applications and enforcement in bilateral relations.

⁴⁵ European Commission, Making the most of the EU's innovative potential : An intellectual property action plan to support the EU's recovery and resilience", 25.11.2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0760&from=EN>

⁴⁶ Press Release, Commission adopts Action Plan on Intellectual Property to strengthen EU's economic resilience and recovery, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2187

Since counterfeiting and pirating has enlarged its spectrum, any sector or any country is not immune to it. Moreover, the fact that counterfeiting goods is changing and adapting according to market trends makes IPR enforcement more difficult than ever. According to data released by WIPO, in comparison to 2003-2004, counterfeit computer equipment seized increased by 899% in the EU alone, while that is reflected by a 707% increase in electrical equipment counterfeit seizures.⁴⁷

Globally thinking, companies and businesses most affected by counterfeiting and piracy, which represents 3.3% of world trade, are generally based in OECD countries, such as the United States, France, Italy, Switzerland, Germany, Japan, Korea and the United Kingdom. On the other hand, emerging countries like Singapore, Hong Kong, China and Brazil are increasingly more threatened by counterfeiting, while at the same time only China and Hong Kong hold approximately 75% of the production and dissemination of fake goods.⁴⁸

The increasing threat of counterfeiting and piracy, along with the need to align and enforce IP regulations both online and offline among countries, are the two most prioritised issues of the EU concerning both its internal market and international trade relations. Considering new ambitions of the von der Leyen Commission, protection and enforcement of IPR must and will play a crucial role due to either its main share in the EU's economy as well as its importance in the export of the infrastructure boosting sustainable development to least developed countries.

Accordingly, to keep up with the EU's priorities considering trade relations in which creative goods consist of continually increasing volume and added value to the national GDP, IPR alignment with the EU, which is its number one trade partner in the world is one of the crucial points for Turkey. Despite the high level of alignment with EU law and international norms, Turkey is ranked second priority in the EU's efforts to enforcing IP protection due to intense industrial and intellectual property infringements. Moreover, regarding investment on creative industries, Turkey still needs to improve its performance with a higher speed to compete with European countries but also with third countries with which the EU develops tighter relations in goods or services classified as intellectual property. As an indicator revealing the state of play both in Turkey and European economies considering the share of creative industries in the GDP, global creativity index results indicate that Turkey ranks at 88 out of 139 countries with 0.348 points, while the average of the EU is higher than 0.650 points.⁴⁹ Investing more in creative industries along with strengthening protection and enforcement of IPR in the

⁴⁷ WIPO Magazine, "Recent Challenges for Enforcement of Intellectual Property Rights", https://www.wipo.int/wipo_magazine/en/2006/02/article_0003.html

⁴⁸ EUIPO, "Illicit Trade, Trends in Trade in Counterfeit and Pirated Goods", https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/trends_in_trade_in_counterfeit_and_pirated_goods/trends_in_trade_in_counterfeit_and_pirated_goods_en.pdf

⁴⁹ Martin Prosperity Institute, "The Global Creativity Index, 2015" https://ec.europa.eu/futurium/en/system/files/ged/31_-_most_creative_countries_-_global_creativity_index_2015_-_canadian_mgt_school.pdf

country should be ranked as top priorities for Turkey in the coming years during which the EU seemingly will do both, within and abroad.