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Belt and Road Initiative and its Effects on Intellectual Property: The Case of Italy

Case Study

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ABSTRACT :

China launched the 'Belt and Road Initiative' (BRI) in October of 2013, designed by Xi Jinping. It covers over 60 percent of the world's population and a third of the global GDP. Recently, Italy publicly announced its support and joined the initiative, causing inner turmoil in the European community and raising questions regarding its impact on intellectual property rights and the safety of European businesses. The importance that the BRI has on Intellectual Property (IP) is determined mainly by whether there is the establishment of effective intellectual property systems between the engaged community. With the development and establishment of the initiative, countries have rightly started to question whether the variations in IP systems between the involved countries exposes investors to additional risks; obtaining and maintaining intellectual property involves more significant risks, difficulties, and more copious amounts of disputes. On the other hand, a properly functioning intellectual property system helps attract foreign direct investment and thus can lead to a greater transfer of technology and knowledge, creation of more jobs, accelerated development of human capital, and the generation of increased tax revenues. This paper researches the potential effects of the 'Belt and Road Initiative' on intellectual property rights and trade. We focus on the Chinese relationship with Italy and the eventual ramifications for the collective European market. The aim is also to provide decision-makers, addressing specifically the Italian Government, with policy recommendations with regards to the next developments of the BRI memorandum with China. Intellectual property rights, in fact, are a crucial area of interest for Italian businesses and are crucial factors in determining competitiveness, especially for the Made in Italy brands and manufactures. Intellectual property (IP) helps to secure return on investments concerning innovation and profoundly affects small to medium-sized organizations (SME). Italian SMEs represent the core of Made in Italy business and could be negatively affected by a policy and regulation breach in protecting IP rights. IP is not only a way to defend innovations from competitors, but also acts as a source of cash through its licensing, sale, and appeal to consumers and investors. Intellectual Property Rights infringement is a significant concern for businesses as it can lead to a loss of business, revenue reputation, and competitive advantage by providing alternate sources for products that have the possibility of otherwise being identical to the original product. In Italy, much of its revenue is based off brand value and reputation. With increased numbers of counterfeit goods, the Italian economy would suffer greatly, and businesses could be put in jeopardy.

KEY WORDS

Intellectual Property, Belt and Road Initiative, China, Italy and Counterfeit Goods

INTRODUCTION

The 'One Belt, One Road' initiative was launched by China in October of 2013 by Xi Jinping. It covers over 60 percent of the world's population, a third of the global GDP, and is today called the 'Belt and

Road Initiative' (BRI)¹. The initiative deals with two separate modes of transportation: a maritime silk road (by sea) and a Silk Road economic belt (by land). Its purpose is to build a Eurasian trade network that crosses more than 70 countries where China is central². China wishes to expand on its trade relationship across Europe and its neighboring regions, and gain more control and say within the international community. Currently, China is one of the top producing countries for many products. The implementation of the BRI represents more than a commercial strategy to strengthen their economy and increase trade, but a geopolitical move with significant effects on the world political balance. Through the BRI, the Chinese government hopes to be a more stable partner for other countries and increase its political and economic weight³.

Recently, Italy has publicly announced its support and has joined the initiative causing inner turmoil in the European community and raising questions regarding the safety of European businesses⁴. Italy is a G7 country and a founding member of the European Union. Its involvement in the Chinese initiative will have not only commercial but also important geo-strategic and political implications; this includes the risk that other major EU members will eventually follow Italy's lead, signing onto the BRI without an adequate legislative and policy framework or screening. European institutions, media, and analysts are concentrated on the general aforementioned economic and political aspects. Yet further implications deserve to be examined. In fact, only a few analysts recognize the impact this initiative will have on intellectual property. An economic penetration of this magnitude – which involves investments and trade for billions of euros – cannot ignore intellectual property rights implications.

This paper aims at being a primary investigation of the potential negative effects of the 'Belt and Road Initiative' on intellectual property rights and trade, with a focus of the Chinese relationship with Italy. Intellectual property rights is a key area of interest for Italian businesses and is a defining factor in determining competitiveness. The Belt and Road Initiative, presented enthusiastically by the Italian government, could hide several problems for the protection of intellectual property (IP).

A DELICATE BALANCE

Italy signed the Memorandum of Understanding (MoU) on the Belt and Road Initiative with the hopes of gaining "more market access in China for Italian companies and 'Made in Italy' products, as well as more Chinese investments in Italy under the Initiative framework"⁵.

¹ Yu Peter K., *China, 'Belt and Road' and Intellectual Property Cooperation*, Legal Studies Research Paper Series, Research Paper No. 19-04, Texas A&M, 2017.

² Adornino, G. B., *Cina: le nuove "Vie della Seta"*, Osservatorio di Politica Internazionale (Torino World Affairs Institute, vol. 140, Turin, October 2018).

³ Luft G., *Silk Road 2.0: US Strategy toward China's Belt and Road Initiative*, Atlantic Council Strategy Paper, Vol. 11, 2017; Mayer M., *China's Rise as Eurasian Power: The Revival of the Silk Road and Its Consequences*, in Mayer M. (edited by) *Rethinking the Silk Road. China's Belt and Road Initiative and Emerging Eurasian Relations*, Palgrave Mc Millan, Shanghai, 2018.

⁴ Chatzky A., *China's Belt and Road Gets a Win in Italy*, Council of Foreign Relation, 27th March 2019; Jonson M., *Why would Italy endorse China's Belt and Road Initiative?*, Financial Time, 21st March 2019.

⁵ *Memorandum of understanding between the Government of the Italian Republic and the Government of the People's Republic of China on cooperation within the framework of the silk road economic belt and the 21st century maritime silk road initiative* signed on 21st March 2019 in Rome;

For Italy, the MoU means the possibility of both more market access in China for Italian companies and "Made in Italy" products alike, and more Chinese investments in Italy. Beijing accounts for 3.4% of Italian exports: just over 13 billion euros worth of products. It stands as the eighth largest export market for Rome⁶. Meanwhile, in 2018, imports from Beijing were estimated to be worth more than 30.1 billion euros, a growing trend if compared with 2017 and 2016. This represents 1.3% of the Chinese export market, making Italy China's 19th largest export market⁷. Furthermore, according to the Italy-China Foundation, Chinese companies and financial institutions have invested in more than 600 Italian enterprises in the last two decades, totaling approximately 13.7 billion euros⁸. All of this makes China a major supporter for the Italian economy, and makes trade between the nations significant.

However understandable the reasons behind Italy signing the MoU, it has raised a number of issues. In signing the memorandum, Italy became the first G7 state to support the BRI; this raised fears that China is planning to use Italy to contend with other members, influence political decisions, and potentially divide the EU. "Italy's endorsement of Chinese President Xi Jinping's signature foreign policy initiative undermines European Union efforts at finding a common stance vis-à-vis Beijing. It also weakens the position of the United States in its tug-of-war with China over trade and global leadership."⁹ There were already unprecedented levels of tension between Rome and Brussels before the signing due in part to the rise of the Eurosceptic coalition of the Five Star Movement and the League, and further escalated by the fight over Italy's budget as well as their overall compliance with the EU's Excessive Deficit Procedure. Italian government's measures provided an increase of budget deficit up to 2.4 percent in 2019, doing a U-turn on a target of 0.8 percent promised by the previous government"¹⁰. European Commission expressed some concerns about the initiative, as investors and the Commission itself alike are already worried about the Italian debt as it ranks second highest next to that of Greece, and is equal to 131.2% of its gross domestic product¹¹.

The fear is that China is not only aware of the controversial Italian-EU relationship, but also wishes to take advantage of that relationship to gain more control over the international landscape. China may be luring Italy with the promise of a trade relationship that will strengthen their economy and reduce the national debt; however, Italy will also be in a place that gives Chinese officials stronger control over the nation, as Italy is not in a financially stable place to reject trade agreements to such an important partner.

The BRI not only acts as a political project for China but also could cause China to rise to a place of strategic importance through the possible acquisition of important Italian ports such as Trieste and Genoa. The European Union has branded China a systematic rival because of its controversial

⁶ Casarini N., *Rome-Beijing: Changing the Game. Italy's Embrace of China's Connectivity Project, Implications for the EU and the US*, IAI Papers, vol. 19, march 2019.

⁷ Data provided by ISTAT.

⁸ Centro Studi per l'Impresa Fondazione Italia-Cina (CeSIF), *Cina. Scenari e prospettive per le imprese*, July 2018

⁹ Casarini N., *Rome-Beijing: Changing the Game. Italy's Embrace of China's Connectivity Project, Implications for the EU and the US*, IAI Papers, vol. 19, march 2019.

¹⁰ Ellyat H., If Brussels rejects Italy's spending plans, here's what could happen next, in CNBC.com, 22nd October 2018.

policies regarding industrial trade and voracious acquisition of intellectual properties. The tension is further escalated because Italy did not consult with other EU members or G7 allies before signing the agreement, which caused distrust and raised the idea that Italy purposefully acted with a lack of transparency. The dire state of Italian infrastructure is best depicted in the 2018 Genoa Bridge Collapse, which was no doubt a catalyst for receiving outside funding for many Italian politicians and citizens.

WHY IP MATTERS

Although the debate has been focused mainly on the geopolitical issue, the penetration of China in Italy and consequently Europe via the BRI could affect also IP. Intellectual property rights refer to often-intangible assets of a company such as logos, copyrights, and patents, and is a key part of all businesses¹². With the development and establishment of the initiative, countries should start to question whether the variations in IP systems between the involved partners will expose investors to additional risks; as obtaining and maintaining intellectual property will involve greater risks, difficulties, and larger amounts of disputes. On the other hand, a properly functioning intellectual property rights protection environment helps attract foreign direct investment and thus can lead to a greater transfer of technology and knowledge, creation of more jobs, accelerated development of human capital, and the generation of increased tax revenues¹³.

Since Intellectual Property (IP) helps to secure returns on investments with regards to innovation, and heavily effects small to medium-sized organizations, Italy could be particularly vulnerable to situations of uncertainty and weakness in the protection of IP. Intellectual Property Rights infringement produces the following negative effects:

1. General socio-economic and business effects, as it can lead to a loss of business, revenue, reputation, and competitive advantage by providing alternate sources of products and production processes with the possibility of otherwise being identical to the original product¹⁴. IP violation also affects innovation processes with significant consequences on growth, employment and criminal activities;
2. Effects on rights-holders concerning sales volume and prices, brand value and firm reputation, royalties, firm-level investments and costs;
3. Effects on consumers (health and safety risks, and consumer utility);
4. Effects on government, especially when it effects tax revenues and leads to major expenditures to combat counterfeiting.

¹² WIPO, *WIPO Intellectual Property Handbook*, Geneva, 2008.

¹³ Ibidem.

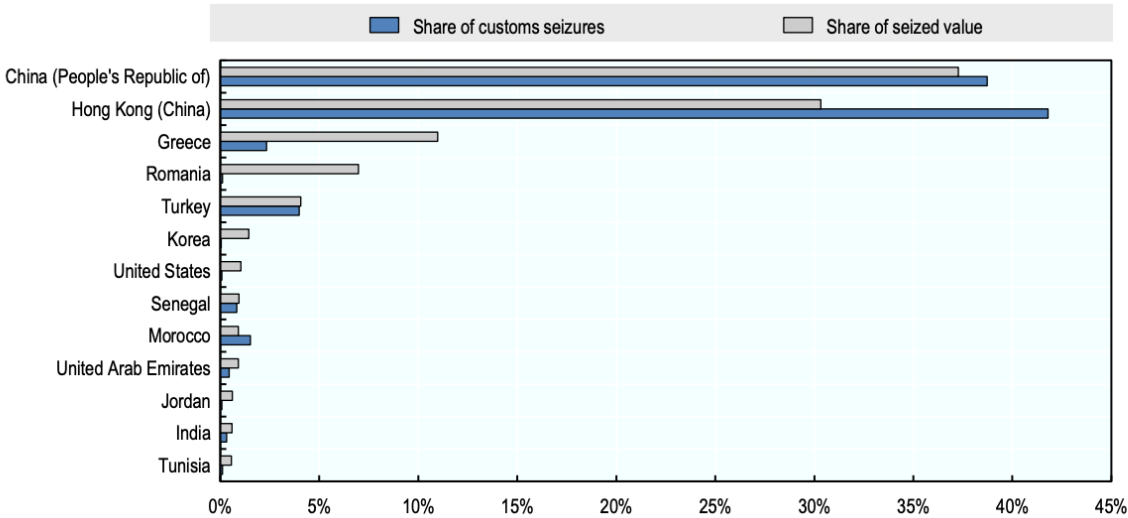
¹⁴ OECD, *The Economic Impact of Counterfeiting and Piracy*, OECD Publishing, Paris, 2008.

In Italy, a substantial part of the economy is based on small and medium-sized businesses (SME) that do not have the resources to defend themselves against intellectual property infringement, like off-brand value high-quality manufacture in an effective way¹⁵. With increased numbers of counterfeit goods, the Italian economy would suffer greatly, and businesses would be put in jeopardy. The “Made in Italy” tag is a key aspect in generating revenue in the Italian market and helps to build the Italian reputation within the international community. The disruption of counterfeit goods would further hinder the “Made in Italy” label, and will diminish trust between consumers and suppliers. The importance of intellectual property standards and regulations between Italy and China are key to the success of the initiative, as Italy will act as an example of the future effects of the BRI.

THE REASONS BEHIND THE CONCERNS

According to the OECD data, the main sources of counterfeit products seized by Italian customs are China and Hong Kong. Between 2014 and 2016 China represented respectively around 37% and 30% of the total seizures made by Italian customs¹⁶.

FIGURE 1 - TOP PROVENANCE ECONOMIES FOR COUNTERFEIT PRODUCTS SEIZED BY ITALIAN CUSTOMS, 2014-16

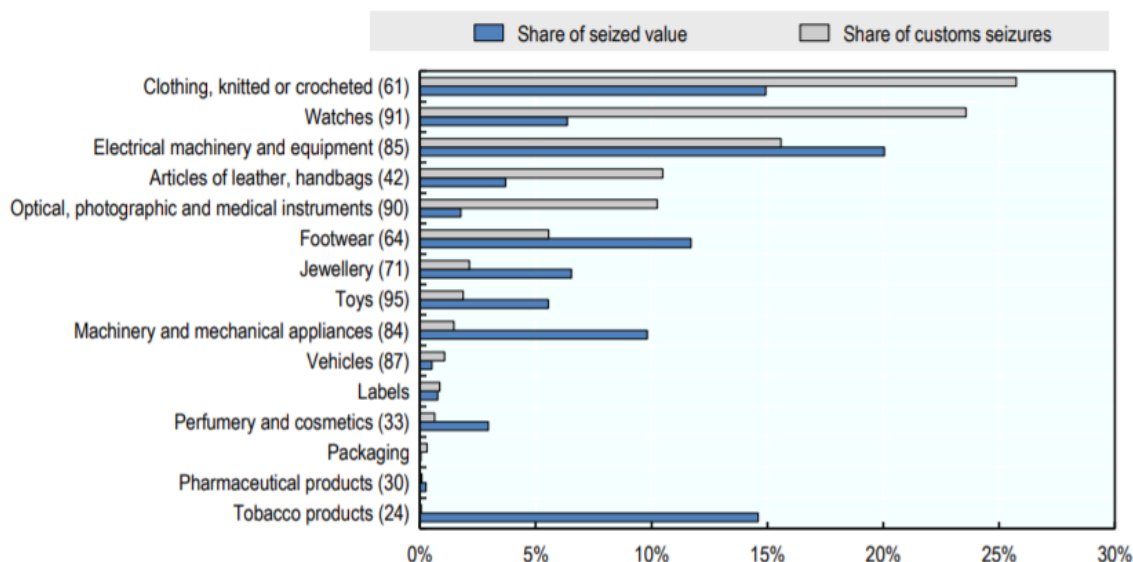


Source: OECD 2017

Asian economies, especially China and Hong Kong, are the main sources of counterfeit and pirated goods that infringe on Italian intellectual property rights; therefore, the fear emerges that with the Belt and Road Initiative, larger amounts of counterfeit goods will be supplied from China to Italy. Both the main provenance economies of counterfeit and pirated products shipped to Italy were also identified as key transit points in the global trade of fake goods in a recent OECD/EUIPO report.

¹⁶ OECD, *Trade in Counterfeit Goods and the Italian Economy. Protecting Italy's intellectual property*, OECD Publishing, Paris, 2018.

FIGURE 2 - SHARE OF SEIZURES OF COUNTERFEIT GOODS IN ITALY BY PRODUCT TYPE, 2014-2016



Source: OECD 2017

As emerges from the graph, the products that are more affected by the phenomenon of counterfeiting are luxury goods, electrical machinery & equipment, and tobacco products. These type of products, especially those of fashion, belong to the “Made in Italy” category. This entails considerable damage to Italian brands whose value is recognized all over the world thanks to the quality and know-how behind the exported products. A large part of these products are made by SME, which, as already pointed out, suffer the greatest damages (direct and indirect) from intellectual property violations¹⁷.

Such illicit trade also reduces sales volumes and hence lowers profits, in turn leading to lower levels of employment in the Italian manufacturing sector. In the long term, Italian companies face significant brand erosion because of unfair competition from counterfeiters that free ride on their IP¹⁸. The loss caused to Italian companies by counterfeiting amounts to 24 billion euros in 2016: 3.2% of all exports. The manufacturing industry for clothing, footwear and leather products incurred the highest losses (3.8 billion) followed by the food, beverages and tobacco (3.2 billion), and electronic and electrical equipment, optical products, scientific instruments sectors (3.1 billion)¹⁹.

For the Italian government, the principal effects of global trade in counterfeit and pirated products that infringe Italian trademarks and patents are forgone tax revenues. Firstly, lower sales volume and profits made by Italian rights holders directly reduce corporate income taxes. Secondly, some sales of these products made on the domestic market are not likely to be registered, which results in

¹⁷ Senato della Repubblica Italiana, *Lotta alla contraffazione e tutela del made in Italy*, Ufficio valutazione impatto, vol. 5.

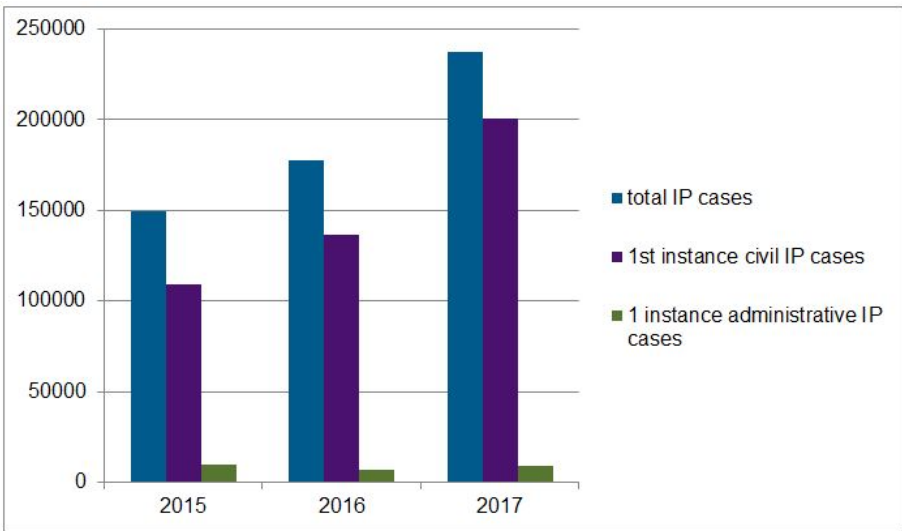
¹⁸ OECD, *Trade in Counterfeit Goods and the Italian Economy. Protecting Italy's intellectual property*, OECD Publishing, Paris, 2018

¹⁹ OECD/EUIPO, *Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*, OECD Publishing, Paris, 2106.

reduced sales and value-added taxes. Finally, manufacturing job losses brought about by counterfeiting reduce payroll taxes, notably social security contributions and personal income taxes²⁰.

Moreover, China ranks number one in the total amount of IP filing activity and remains the largest IP litigation venue, in which China's numbers continue to rise. In 2017, the total amount of IP cases filed (both new cases in the first instance and new appeals) amounted to no fewer than 237,242 cases²¹. Between 2016 and 2017, litigations saw an increase of around 33.5%, showing that China is taking steps to further their regulations of IP.

FIGURE 3 - IP LITIGATIONS IN CHINA



Source: Lime Green IP News

The current situation stands with China as the first source of fake products that are imported into the European Union, consisting of 64% of total goods blocked or seized by customs. This is partly due to non-unified registered intellectual property rights. Intellectual property rights that are registered, including those registered in Hong Kong, the EU, and the UK, do not provide adequate protection of intellectual property in Mainland China.

To fight against IPR infringements and counterfeit goods, China has set up the Office of the National Leading Group on the Fight Against IPR infringement and Counterfeiting under the Ministry of Commerce. The special department is responsible for "the liaison, coordination, supervision on the actions taken by the local government authorities against counterfeit products."²² They also arrange meetings with foreign government officials or association representatives with regards to stopping the sale of counterfeit goods.

²⁰ Ibidem.

²¹ <https://www.limegreenipnews.com/2018/09/china-ip-litigation-and-prosecution-statistics-taking-a-step-back-to-see-the-bigger-picture/>

²² <https://www.irglobal.com/file/1badfbdf8067869e18e3670ed885088.pdf>

Despite the efforts of the Chinese government, it was not possible to adequately limit the phenomenon of counterfeiting and infringement of intellectual property.

ISSUES FOR EUROPE

Issues that could arise from the Belt and Road Initiative are not solely international. Italy's IPR could of course be directly affected as well. New transportation passages between the EU and China, such as the growing rail network, will provide counterfeiters new ways to move their products. According to the EU IPO synthesis report on IPR infringement for 2018, the volume of counterfeits in trade could account for up to 5% of the total amount of EU imports: approximately 85 billion euros²³. Therefore, the direct economic costs that legitimate industries incur in the European Union per year due to counterfeit goods for sale in the marketplace is approximately 59 billion euros, and the loss of around 435 thousand jobs. Because Italy is the first G7 nation to join China's initiative, the developments made by Italy regarding the BRI are of the utmost importance and act as a representation and example of what is to come for the future nations of the BRI. Italy could act as a new leader in innovation for intellectual property standards to maintain its place in the international community. For if the BRI fails in Italy, it is unlikely that future nations will be willing to join similar initiatives even with partners that are more reliable. The steps Italy makes now will shape the development of future IP systems and standards, and Italy must keep in mind the microscope that it is under.

In terms of European nations, beyond the worry of China driving a wedge between nations, some Europeans worry that Chinese companies investing in the high-tech, communication, and information sectors could lead to further information and secrets being leaked, leading to intellectual property thefts on a higher degree. This could also allow China's government and intelligence agencies to increase surveillance in Europe. Increasing the number of public procurements for China in the technology sector could lead to larger amounts of spying software active in the governmental establishments of the EU. Currently, there have been fears about Chinese company Huawei spying on government officials; these claims mainly began in the U.S., where they have banned products manufactured by Huawei from use for government officials. If claims like this were true, the BRI would be putting many nations at risk of losing valuable national secrets and information that is critical for their survival.

Furthermore, for Italy, Chinese investment has proved controversial as many fear China is simply buying out Italy, not buying into Italy²⁴. China's use of debt-trap diplomacy is widely recognized and maybe goal with Italy. The struggles of Sri Lanka, the Maldives, and Malaysia to repay loans are notable examples. Italy's lackluster economy, saddled with a debt to GDP ratio of more than 130% risks falling foul to the same ploy. With large amounts of debt, China would be able to have a large sway with the Italian IP system, thus, the European IP system as a whole. This could lead to the creation of loopholes that would be detrimental to the entire European and Italian economy.

²³ EUIPO, *Synthesis Report on IPR Infringement*, 2018.

²⁴ <https://globalriskinsights.com/2019/04/italy-embraces-belt-and-road-initiative/>

The effects that the BRI could have in Italy will ultimately act as a representation of China's goals, the start of strong Chinese influence in the international economic playing field, and either a start of greater relations between the EU and China or worsening relations between Italy and the remaining EU countries.

Consequently, it is important for the Italian and European IP system to set common standards to protect against counterfeit or illegal goods sold by Chinese companies. Giving China power over Italy and the European system will likely lead to larger amounts of counterfeit goods as well as intellectual property rights infringement by China. Thus the BRI is a threat to the security systems of intellectual property within the European Union and Italy. With regards to the "Made in Italy" label, the counterfeit goods produced and supplied into Italy threaten the trust between consumers and suppliers. The effect of counterfeit goods is shown over the world, where people are untrusting of major label brands unless they are bought in their specific brand stores. In terms of Gucci and Prada, this may not have a large effect as many who wish to buy these goods have access to the specific brand stores. But for the "Made in Italy" label, the existence of counterfeit goods becomes a problem as there is no way to guarantee the given fact (that it was made in Italy). The "Made in Italy" label is a key aspect in generating profit in Italy and has a considerable international appeal. The loss of such an asset for the Italian economy would be extremely detrimental. The cost of the BRI on the Italian economy is not yet known, but there are many facts that will affect it including the establishment of efficient policy provisions on IP rights in the official agreement between Italy and China that will follow the Memorandum.

KEY POLICY SUGGESTIONS

To guarantee the safety of intellectual property, a few key points must be considered with the establishment of the BRI. Firstly, clear IP regulations and systems should be put in place for countries in advance of joining the BRI. This will ensure efficiency and unbiased rulings, as the granting of intellectual property must be approved and takes time. If a country were to join the BRI before standards and regulations are put in place, they would have higher risks on IP and would have a delayed start to enacting IPR on goods, thus leaving certain intellectual properties open to be stolen. Furthermore, because of the higher risk of IP disputes, before joining the BRI, countries must first ensure that there are established and effective ways of settling IP disputes within their nation. Countries should seek to find, at the furthest extent allowed by law, a way to negotiate IP standards on an international level that furthers the development of the BRI with internal IP systems.

Italy must continue their development of intellectual property systems and cooperation mechanisms for the BRI while keeping in mind they are at the center of the international community's attention. While moving forward, Italy must establish ways of regulating the "Made in Italy" label and other intellectual properties. Italy must also keep in mind its relations with the European Union and cooperate with European institutions in order to create an effective screening of Chinese investments. This will help prevent some of the negative effects of the BRI, and help them remain in good standing relationships with other European countries. If Italy acts as a representation of failure for the BRI, other nations will not join; and the possibility for its benefits are diminished. Furthermore,

Italy being put in economic distress from the BRI will not only affect the Italian economy but the European economy, and perhaps the world economy as a whole.

CONCLUSION

With the establishment of the BRI comes opportunity and threats. While moving forward countries must be aware of the possible consequences for their intellectual property systems and act accordingly. China and Italy's agreement could symbolize the possible start of a newer relationship between China and Europe or may possibly cause issues between Italy & Europe, and China & Europe in terms of both political unrest and intellectual property. New developments have already proven to cause worry amongst Europeans and have become an area of discussion in Italian politics. Still too few policymakers and stakeholders believe that the initiative could lead to increased numbers of IP infringements and counterfeit goods shipped into Italy and Europe from China – which is already the leading nation to ship such illegal goods and violate IPR as data demonstrates.

The balance between trade practices and intellectual property are key to the success of the nations involved in the BRI initiative. Italy will act as the major example for future states that join the BRI, and thus they must act with exemplary conscience and consideration. The failure of Italy to successfully transition themselves into an IP friendly BRI state would have detrimental effects on the entire international community, and also will affect Italian business, especially its vulnerable SMEs. Italy stands to lose the most of any other nation (excluding China) that have joined the BRI, but also could stand to gain the most. Still, with the implementation of effective IP systems and regulations to safeguard the “Made in Italy” label and the Italian economy as a whole, the BRI could become a major economic advantage to Italy. Without the existence of predetermined standards and regulations for intellectual property, the deal, without a doubt, will cause major detrimental effects to the international trade community. Strengthening and tailoring an IP system equipped to handle the changes is needed. It is our hope, that with the help of the international intellectual property community, the Belt and Road Initiative will not turn into a story of warning and fear, but success and prosperity in Italy and the world.

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