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**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English

**ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS REGARDING GOODS IN TRANSIT:
QUESTIONS TO THE EUROPEAN UNION**

COMMUNICATION FROM INDIA

Addendum

The following communication, dated 18 October 2018, is circulated at the request of India.

In continuation of its earlier communication (IP/C/W/636), India hereby requests the European Union (EU) to provide answers to the following questions on the trademark issues:

1. The EU has envisaged three situations covered by Regulation (EU) No. 608/2013 in its answers to questions 2 and 4 against the questions posed by India, i.e. (a) when declared for release for free circulation, export or re-export, (b) when entering or leaving the customs territory of the EU, (c) when placed under a suspension procedure or in free zone or free warehouse. Can the EU clarify whether the goods entering the EU, which are not meant to be placed for free circulation in the EU market, will be included within the scope of the three situations mentioned herein above. Could the EU further clarify if the goods in transit through the EU will be subjected to suspension of release or detention on suspicion of trademark infringement?
2. If the goods-in-transit through the EU will be subjected to suspension of release or detention on suspicion of trademark infringement of an EU trademark holder, can the EU clarify whether the procedure of suspension of release or detention will be initiated based upon any information received in this regard from the relevant authorities in the country of destination? If above procedure for suspension of release or detention is not based upon any information received from the relevant authorities in the country of destination, can the EU clarify the basis of initiating the procedure for suspension of release or detention of the goods-in-transit?
3. Article 18 of Regulation (EU) 608/2013 read with paragraph 3.1 of the Commission Notice (EU) 2016/C 244/03 provides for *suo moto* detention of goods suspected for infringing intellectual property rights. Can the EU clarify any and all criteria based upon which the customs authorities in the EU can proceed with *suo moto* detention of the goods-in-transit suspected of trademark infringement? Further, in case the detention of goods is proved wrong subsequently, will there be compensation to the owner of the goods?
4. In view of the repeal of the Regulation (EU) 207/2009 read with Regulation (EU) 2424/2015, and the promulgation of new Regulation (EU) 2017/1001, can the EU clarify the status of the Commission Notice (EU) 2016/C 244/03?

5. Paragraph 3.1 of the Commission Notice (EU) 2016/C244/03 states that "... The detention of goods means holding back the goods and allowing the right holder to have access to confidential information and inspect the goods in question, ...". In this context, can the EU clarify:
 - a) The source of the said confidential information;
 - b) In what circumstances the said confidential information will be collected and shared with the right holders;
 - c) The nature and details of confidential information that may be shared with the right holders;
 - d) At what stage such confidential information will be shared with the right holders;
 - e) The purpose of giving the right holders the access to such confidential information and to inspect the goods in question; and
 - f) How does the legal regime of the EU ensure that the sharing of confidential information with the right holders is not subjected to misuse?

 6. With reference to Article 23 of Regulation (EU) 608/2013 with respect to destruction of goods, can the EU clarify:
 - a. Under what circumstances does the aforementioned provision becomes applicable?
 - b. Where the declarant or holder of the goods suspected of infringing trademark right of a EU trademark holder does not confirm his agreement or opposition to destruction of goods under Article 23 of Regulation (EU) 608/2013, do the customs authorities necessarily destroy the goods in question?
 - c. Whether the notification of destruction of goods is issued in all cases where the customs authorities cease or detain the goods suspected of infringing trademark rights? Is there any specimen of such notification that the EU can provide?
 - d. Whether the reference to "working days" in this provision relates to the working days as per the EU or the country of export?
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