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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

The following communication, dated 5 October 2017, is circulated at the request of India.

India appreciates the efforts made by the European Union ('EU') on issuance of a "Commission notice on the customs enforcement of Intellectual Property Rights concerning goods brought into the customs authority of the Union without being released for free circulation including goods in transit" (the "Commission notice", see EU Document 2016/C 244/03 of 5 July 2016¹). India considers that the Commission notice would definitely help in understanding the issues that may or are likely to arise while applying the Regulation (EU) 2015/2424. The Commission notice also addresses the relationship with Directive (EU) 2015/2436 which harmonizes Member States' laws as regards national trademarks.

In this regard, India would like to request the European Union for certain relevant documents and clarifications regarding the applicable law. These are:

1. Can the EU provide a list of all the applicable custom laws issued by the EU which could be in the form of regulations/directives/guidelines etc.?
2. Can the EU clarify whether Regulation (EU) No 608/2013 is directed only to goods intended and/or suspected of entering into the EU market?
3. Does Regulation (EU) No 608/2013 provide any substantive right to an IPR holder or is it merely enforcing the existing IP rights? It is also requested that the EU provide a list of existing laws/ regulations/ directive/guidelines issued by the EU governing IPR.
4. Are there any IPRs or infringement of IPRs which are excluded from the scope of Regulation (EU) No 608/2013? Specifically, please clarify whether goods which are not intended for free circulation in the EU market and are also not suspected of entering into the EU market, are exempted from the scope of Regulation (EU) No 608/2013.
5. Is it mandatory for goods originating from outside the EU to be 'released for free circulation' by EU customs authorities before they are placed on the EU market? Are there any other customs approved use(s) by which goods originating from outside the EU may be placed on the EU market?
6. Can the EU clarify the factors which are taken into consideration by the EU customs authorities while undertaking risk analysis criteria as provided in recital 16 of Regulation (EU) 2015/2424 and recital 22 of Directive (EU) 2015/2436?
7. Can the EU clarify whether paragraphs 2.2 and 3.2 of the Commission notice would apply to medicine(s) as well?

¹ The notice has been published in: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:244:FULL&from=EN>