

# Goods in Transit - Perspective of the Industry

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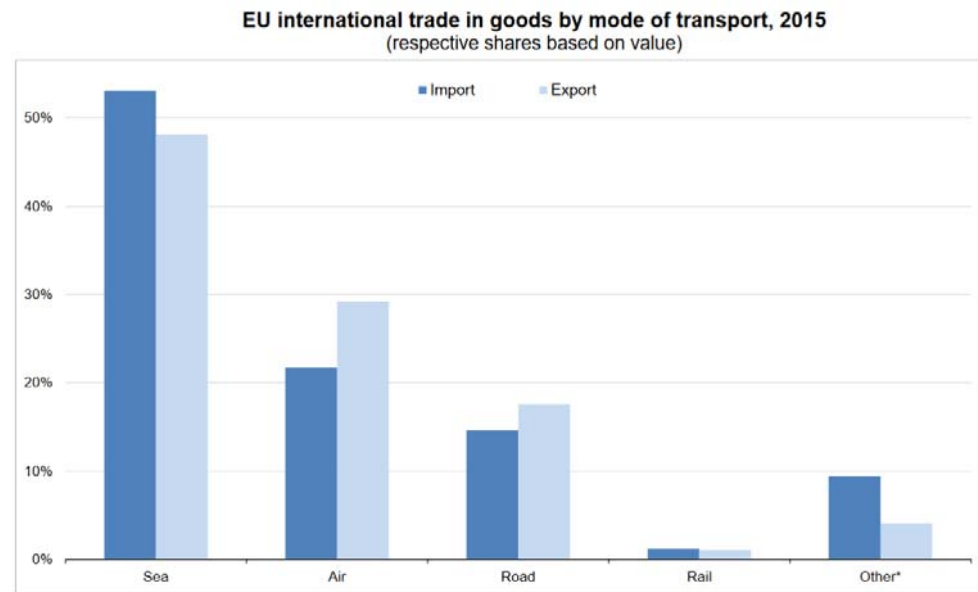
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# Why is the Transit debate so relevant?

- Economic factors
- Legislation
- Observations

## EU Cargo Ports

- Over 50% of all weight is imported into EU by sea
- 28 Member states
- Just in time deliveries – in order to anticipate travel time
- Lots of consignments enter EU with transit status



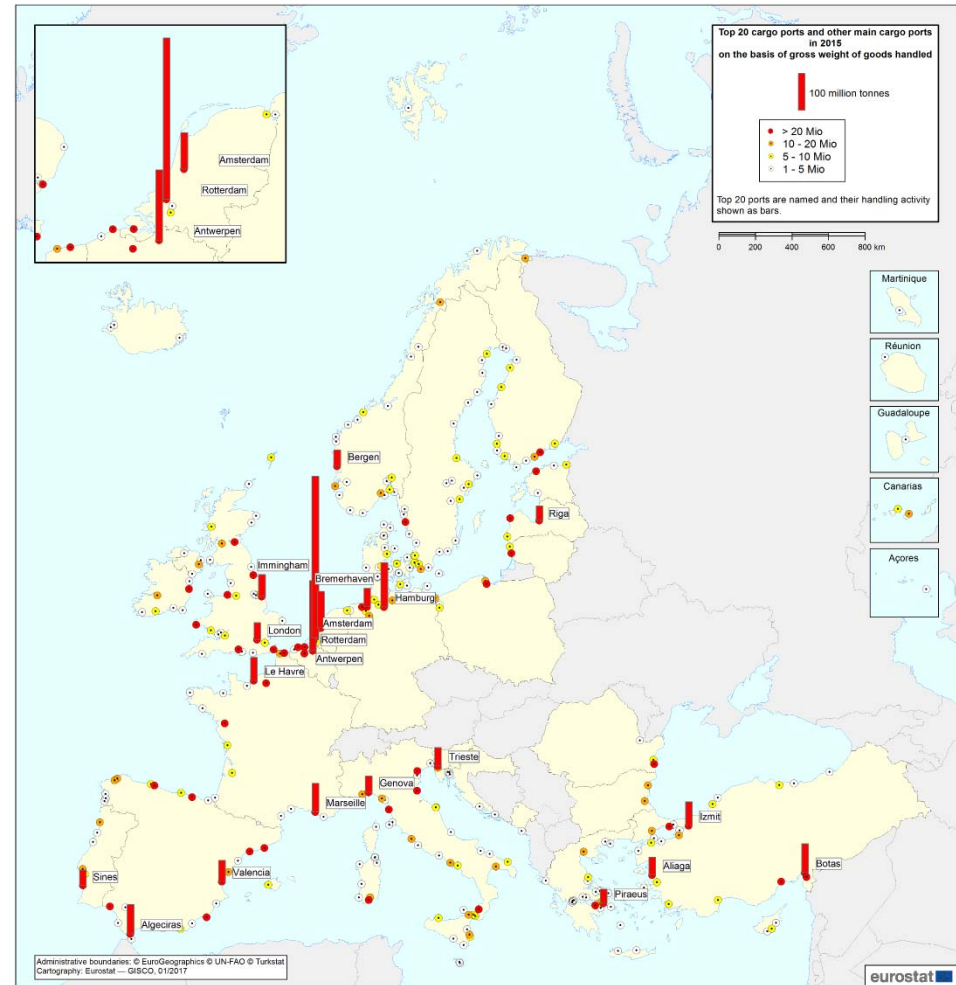
\* category 'Other' covers: Fixed Mechanism (including pipelines), Self propulsion, Inland waterways, Post and Unknown.

Source: Eurostat

# EU Cargo Ports

- Limited number of large seaports
- Rotterdam and Antwerp account for 37% of volume of containers handled in 1000 TEUs (Twenty-Foot Equivalent Unit) handled in top 10 EU cargo ports

Port	2013	2014	2015
Rotterdam	11021	11634	11577
Antwerp	8256	8812	9370
Hamburg	9302	9775	8848
Bremerhaven	5822	5731	5467
Valencia	4328	4407	4609
Algeciras	3988	4555	4516
Felixstowe	3434	4072	4043
Gioia Tauro	3652	3708	3030
Le Havre	2186	2433	2560
Genova	1546	2014	2079
<b>Total</b>	<b>53535</b>	<b>57141</b>	<b>56099</b>

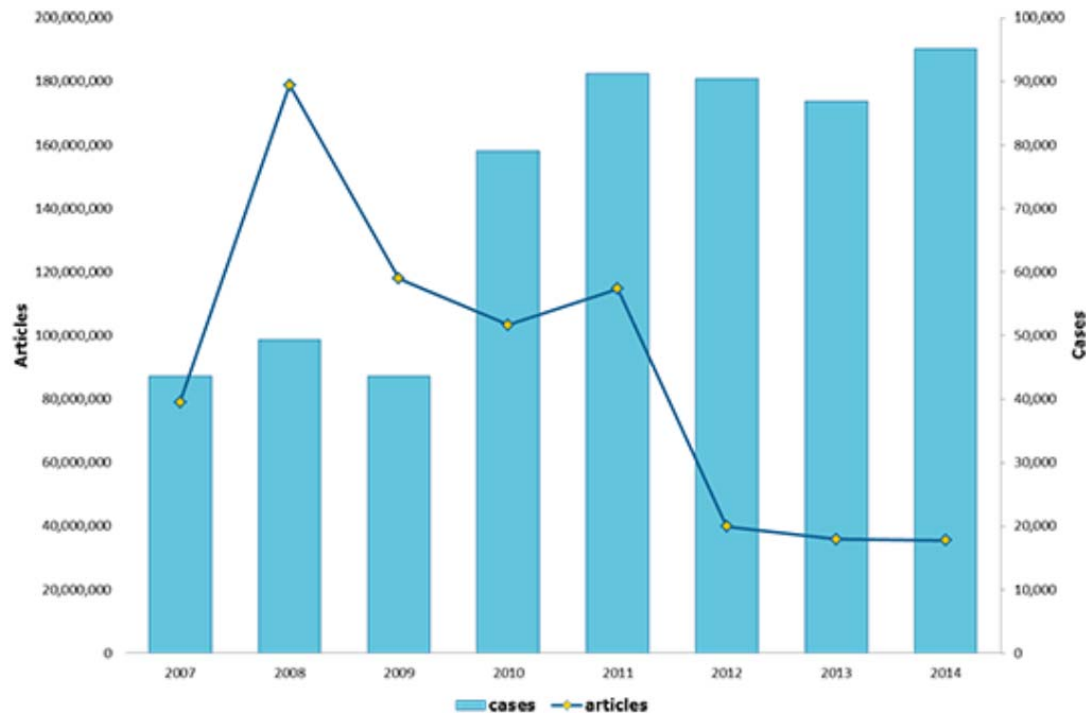


## Counterfeiting is a global economy



- 2.5 % of world trade (USD 461 billion dollars a year); and 5% of all imports into the EU by value (OECD, EUIPO, Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, 2016)
- Industry's concern expressed in joint letter to President Juncker
- Large concentration of cargo vessels in and around EU waters

## Impact of CJEU's judgment in Philips/Nokia



Source: EU Commission - TAXUD

- “Manufacturing fiction” rebutted by CJEU
- Creating uncertainty (2008 and 2012)
- Customs should act upon suspicion
- 2012 saw a unprecedented 65% fall of articles being detained by customs in EU

## Customs Regulation 608/2013

- Contains only procedural rules for customs authorities
- Does not amend the substantive law
- Is to be covered by the new legislative package
- No specific wording re transit in Regulation 608/2013

# Trademark Package (I)

- Acts that infringe upon a trademark:
  - affixing the sign to the goods or to the packaging thereof;
  - offering the goods, or putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;
  - importing or exporting the goods under the sign;
  - using the sign as a trade or company name, or as a part thereof;
  - using the sign on business papers and in advertising;
  - using the sign in comparative advertising in a way which is contrary to Directive 2006/114/EC [Misleading and comparative advertising]
- Transiting goods over territory of import country is not an infringing act



## Trademark Package (II)

- Regulation (EU) No 2015/2424 refers to Transit in
  - Recital 15 & 16
  - Section 9 para. 4
- Regulation (EU) No 2015/2424 stipulates that counterfeit goods in transit through the EU, even if those goods are never targeted at EU consumers, can be seized unless it can be shown by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination
- The burden is on the "infringer" to prove this
- “not entitled to prohibit the placing of the goods on the market”
  - Registered trademark
  - Famous trademark
  - Common Law Rights
  - Relevant court decision
  - Other national laws in the country of destination

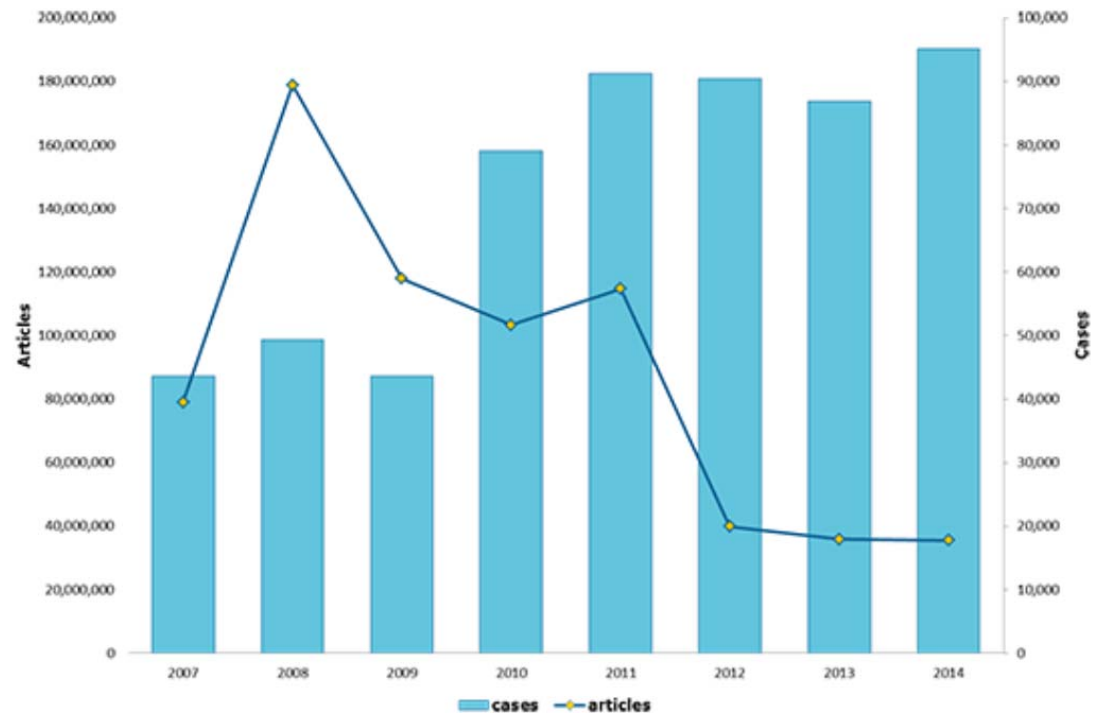
## Trademark Package (III)

- DG TAXUD's Guidelines, explaining to Customs how the TM Package should be implemented (Transit provisions in particular)
- Proposal: Rights holders should include a list of **all** their registered trade marks across **all** non-EU territories in their applications for action (AFA) with European Customs
- Commission notice on the customs enforcement of Intellectual Property Rights concerning goods brought into the customs territory of the Union without being released for free circulation including goods in transit (2016/C 244/03), in line with the wording and spirit of TM Package
- Practice: If a new detention occurs, the right holder may be asked -informally- to confirm about his position in the country of destination in a timeframe of a few days (between the actual detention and the official notification). In case the right holder confirms not to have any relevant rights in the country of destination, the consignment will be released

# Implementation

- Generally it is too early to draw conclusions
- Not all member states use the transit provision in the same way
  - Difference between small and regular/large consignments
  - Member states such as Malta apply in any case

# Observations



Source: EU Commission - TAXUD

- Following success of e-commerce, postal and express consignments generate a lot of customs cases
- We may need to question whether EU legislation, such as e.g. IPRED, needs to be updated to cater this evolution
- The numerous 'small' cases do not generate a large amount of articles being detained
- Inspection of containers and detention of large consignments is crucial for the success of a border detention program
- Risk profiling and data analysis are key factors

