

Brussels, 29 May 2012

Ref: Proposed Regulation on Customs Enforcement of Intellectual Property Rights – Counterfeit Goods in Transit Must Be Covered Effectively

Business views submitted on behalf of:

- *ICC BASCAP - Business Action to Stop Counterfeiting and Piracy*
 - *ECTA - European Communities Trademark Association*
 - *INTA - International Trademark Association*
 - *MARQUES - European Association of Trade Mark Owners*
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Dear Member of the Council Customs Working Group,

The broad cross-section of industries, sectors and businesses signing this letter - which generate substantial growth and employment in Europe - are writing to you with regard to the European Commission's proposal for a Regulation concerning customs enforcement of intellectual property rights. While we appreciate the efforts of the Council to strengthen the Customs Regulation proposal, we are concerned about the approach taken in the Council draft compromise text dated 25 April 2012, in relation to the issue of goods in transit.

Given the common difficulty of proving the intended destination of goods in transit, in particular because these are often subject to inadequate or false declarations, we believe that Customs authorities should be able to detain suspected counterfeit goods in transit, absent proof by the declarant or owner of the goods that these goods are in fact destined for a non-member country of the Union. The Customs Regulation thus should make clear that the declarant, holder or owner of the goods ultimately bears the burden of proving the destination of the goods. In the absence of clear and adequate proof, Customs and other law enforcement authorities and jurisdictions may legitimately presume that the fake goods in transit are destined for the Internal Market and are no longer in transit.

We therefore urge the Council to consider the amendments adopted in March by the European Parliament's Internal Market and Consumer Protection Committee (IMCO) regarding goods in transit, in particular Amendment 11. Amendment 11 addresses the issue of fake goods in transit likely to be diverted into the Internal Market by providing additional safeguards to prevent those goods (which often pose health and safety risks to consumers) from entering the Internal Market. Such safeguards consist, first, of reversing the burden of proof to make the declarant, holder or owner of the goods responsible for providing clear and convincing evidence that the goods are not destined for the Internal Market and, second, of issuing guidelines providing criteria for Customs authorities to effectively assess the risk of deviation of goods onto the market of the Union, taking into account the relevant case-law of the Court of Justice of the European Union.

We thus believe that the Amendment 11, included in the EP IMCO Committee report, will enable Customs authorities to deal more effectively and conclusively with the issue of suspected counterfeit goods in transit under the proposed Customs Regulation, and thereby to increase its effectiveness.

We thank you for your kind attention to this crucial issue.

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REPORT on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights. (COM(2011)0285 – C7-0139/2011 – 2011/0137(COD). Committee on the Internal Market and Consumer Protection

Amendment 11

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Where goods in transit are suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right, the declarant or holder of the goods should bear the burden of proving the final destination of the goods. The final destination of the goods should be presumed to be the market of the Union in the absence of clear and convincing evidence to the contrary provided by the declarant, holder or owner of the goods. The Commission should adopt guidelines which will provide criteria for customs authorities to effectively assess their risk of deviation onto the market of the Union, taking into account the relevant case-law of the Court of Justice of the European Union.