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From: General Secretariat of the Council
To: Delegations

Subject: SECOND YEARLY SUMMARY REPORT ON THE STATE OF
IMPLEMENTATION
OF THE EU CUSTOMS ACTION PLAN TO COMBAT IPR
INFRINGEMENTS
FOR THE YEARS 2013 TO 2017

Delegations will find attached a document on the above subject, transmitted by the Commission services.

**SECOND YEARLY SUMMARY REPORT ON THE STATE OF IMPLEMENTATION
OF THE EU CUSTOMS ACTION PLAN TO COMBAT IPR INFRINGEMENTS
FOR THE YEARS 2013 TO 2017**

Introduction

Recognising the objective to strive for a high level of enforcement of intellectual property rights (IPR) and the need to provide customs authorities with the necessary tools to address new trends in international trade of goods infringing those rights, the Council adopted the 3rd EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017 in December 2012. The Action Plan contains four strategic objectives:

- Effectively implementing and monitoring the new EU legislation on customs enforcement of IPR
- Tackling major trends in trade of IPR infringing goods
- Tackling trade of IPR infringing goods throughout the international supply chain
- Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities

The Action Plan is being implemented on the basis of a roadmap defining the actions, their timeframe and the tools to be deployed during the period. The roadmap was prepared by the Commission services, in coordination with Member State experts, and presented to the Council mid-2013.

As foreseen in the Action Plan, the present document contains the second yearly summary report of the activities that were carried out in 2014, as envisaged in the roadmap.

In 2014, the efforts mainly focussed on:

- the smooth implementation of Regulation (EU) No 608/2013¹ on the customs enforcement of IPR, applicable since 1 January 2014,
- the implementation of the COPIS database,
- the resuming of the operational activities with China and the on-going upgrading of IPR cooperation with Hong-Kong China.

A multi-layered cooperation with OHIM has also been pursued.

Effectively implementing and monitoring the new EU legislation on customs enforcement of IPR

The updated manual for right-holders was published in English at the beginning of 2014. Other language versions were made available later during the year. Following the adoption of the Commission Implementing Regulation (EU) No 1352/2013 of 4 December 2013², the forms for right-holders' application for action were made available in all languages (under "pdf format" that can be filled electronically and saved on the right holder's system).

The eLearning course addressing the changes resulting from the new IPR legislation for customs (developed by the Commission together with experts from the Member States and OHIM) has been made available in 2014 on the Commission's Europa website (DG TAXUD page).

¹ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, OJ L 181, dated 26.09.2013, p. 15

² Commission Implementing Regulation (EU) No 1352/2013 of 4 December 2013 establishing the forms provided for in Regulation (EU) No 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights, OJ L 341, dated 18.12.2013, p. 10.

The Commission proposal for an EU coordinated training plan to Member States experts of the C2013/2020 Training Steering Group and of the Customs Code Committee-IPR enforcement section was adopted. The Commission is closely coordinating this activity with the Observatory on infringements of Intellectual Property Rights, which will provide the input on the substantive IP laws in the future training modules.

COPIS entered into application on 1st January 2014. Customs authorities have been progressively adapting to the system, which will be further adapted to respond to administrations' needs.

To allow for adequate provision of information on the Regulation (EU) No 608/2013 to right-holders and stakeholders, the Commission organised in July 2014 a dedicated meeting with a selected number of stakeholders and representatives of the EU Customs administrations, where the functioning of the new Regulation was discussed and questions and answers on practical aspects of the procedure were handled. All relevant information was also channelled to stakeholders via the EU observatory on infringements of IPRs, or during ad hoc meetings with national federations of right-holders to which the Commission was invited (such as the seminar organised by the Belgian Federation of Firms on “how to better protect against counterfeittings”, or the discussion on “Border Seizure Measures: New European and Austrian rules” organised by the OeV (Austrian Federation for Intellectual Property and Copyright)).

The yearly report of statistics on customs enforcement of IPR for 2013 was published in July 2014. It shows that clothing (12% of all articles detained) and medicines (10%) are among the top categories of goods detained. Postal and courier packages accounted for around 70% of customs interventions in 2013, with 19% of the detentions in postal traffic concerning medicines. Around 90% of all detained goods were either destroyed or a court case was initiated to determine the infringement. China continues being the main source of fake products with 66% of all products detained coming from China and 13% coming from Hong Kong China. Other countries, however, were the top source for specific product categories, such as Turkey for perfumes and cosmetics and Egypt for foodstuffs.

The data reported by Member States have been shared with the EU Observatory of infringements of IPR for their inclusion in the Anti-Counterfeiting Intelligence Support Tool (ACIST). This tool is a central repository to collect statistics on detentions carried out at EU borders and within the Internal Market.

Tackling major trends in trade of IPR infringing goods

The Project Group on IPR customs enforcement on small consignments, set up in 2013, met in July 2014. Composed of 13 Member States representatives, each participant has been allocated a specific task under the work programme, with a view to deliver final results by the end of 2015.

The Commission Joint Research Centre (JRC) and the Commission (OLAF) are working on the identification of tools available in JRC, which could be useful and/or tailored for tracking and tracing illicit traffic of cigarettes and counterfeit goods.

In the context of strengthening customs risk management, the request for regular provision of appropriate IPR risk and Customs control information via the Common Risk Management System has resulted in MSs exchanging risk information³ on 311 cases in 2014 (till 20 November), against 395 cases in 2013.

With regards to the elaboration of a coordinated work plan for Joint Customs Operations (JCO) and Priority Control Areas (PCAs), this is work in progress. One JCO supported by OLAF took place in 2014, in addition to the one coordinated by OLAF in the ASEM context. For 2015, one JCO supported by OLAF has also been planned.

³ As required by article 4g of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

At the occasion of the 7th meeting of the EU-China Joint Customs Cooperation Committee held in Beijing on 16 May 2014, the Commission and the General Administration of China Customs ('the GACC') signed the Action Plan concerning EU-China Customs Cooperation on IPR (2014 – 2017). Financial and logistical support is provided mainly through the EU IP Key programme, as managed by OHIM.

The first meeting under the new EU-China IPR Action Plan 2014-2017 took place in Ningbo, China from 6 to 9 May 2014. It enabled to resume the operational cooperation between the Commission services and the representatives of 16 seaports and airports in the EU⁴ on the one hand, and the GACC and representatives from 11 local Chinese Customs on the other hand.

Regarding the implementation of Key Action 2 (KA2) on the exchange in real-time of information related to seizure cases within the seaports and airports network, positive technical achievements were carried out and in particular the set-up of an IT pilot to test the use of the MABMail AFIS system to support the exchange of cases-related data.

The meeting was supplemented with a joint Customs-Industry workshop where legislation and practices of both sides were introduced and discussed with Industry representatives.

After training had been provided by OLAF to the KA2 experts in the EU and in China, the MABMail pilot was officially started on 19 September for a two-month trial period.

The 2nd meeting under the EU-China IPR AP (2014-2017) took place in Rome, Italy from 25 to 27 November 2014. It consisted in:

- The second Working Group meeting between the Commission and the GACC, and
- The first meeting of the Joint Group of Risk Management experts specialized in IPR.

At the Working Group meeting a common understanding was reached as to the outcomes of the MABMail IT pilot, the enhancement of cooperation in IPR between all relevant law enforcement authorities, as well as the future activities to be implemented in 2015.

⁴ Seaports : Antwerp, Rotterdam, Hamburg, Le Havre, Felixstowe, Algeciras (not present in the meeting), Genoa, Naples, Sines, Pirraeus, Constanta - Airports : Luxemburg, Paris Roissy CDG, Bierset (Liège), Amsterdam Schiphol, Budapest, London Heathrow.

Five MS experts in risk analysis⁵ were represented within the Joint Group meeting. It resulted in laying down foundations to initiate a joint risk analysis in order to detect general risk and trends. As foreseen under action 3.1.1 of the Action Plan, cooperation on IPR with Hong Kong China Customs is in the process of being upgraded via the negotiation of an Action Plan on IPR customs cooperation, based on the EC-Hong Kong Customs Cooperation Agreement and Mutual Administrative Assistance Agreement (1999). This Action Plan should focus on risk analysis and on the exchange of IPR border detention data starting with a pilot phase.

In 2014, Customs Mutual Administrative Assistance has been significantly intensified with Ukraine, Hong-Kong China and the USA for investigations carried out in the IPR sector by OLAF.

In the area of bilateral trade agreements recently signed and concluded, negotiation by the European Union have successfully integrated chapters on IP protection and enforcement with a Border Measures Article which reflects the EU approach and will strengthen IPR enforcement in third countries (in 2014, Georgia or Moldova for instance).

In 2014, the Commission has also been participating to the following international actions:

- The Commission co-organised together with OHIM an EU Delegation Network Event (the Network aims at raising IP policy awareness and enhance the effectiveness of EU delegations to deal with IP matters).
- The Commission attended in April a meeting in Moldova organised by the European Union Border Assistance Mission to Moldova and Ukraine (EU BAM) to present Regulation (EU) No 608/2013.

⁵ Participants: 5 on EU side: BE – DK – IT – PT – UK / on China side: Shanghai, Xiamen, Huangpu, Tianjin, Guangzhou

Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities

In 2014, the Commission, Member State experts and the European Observatory on infringements of Intellectual Property Rights have further enhanced their cooperation. In addition to coordinating the Customs activities enshrined in the yearly work programme of the Observatory, the Commission services and national customs experts participated in several events organised by the Observatory, such as the general and public stakeholders meetings, as well as the working group meetings on enforcement issues and statistics. The Observatory is also regularly invited to attend the meetings of the Customs Code-IPR enforcement Expert group in order to ensure coordination of customs-related activities.

As already mentioned, a joint development of training modules on IP law for customs is under preparation. In addition, access for EU customs authorities to the Observatory Enforcement Database (EDB) via the CCN/CSI network has been fulfilled. The Observatory and the Commission have also launched the integration project between the EDB and COPIS that will allow right-holders to transmit the information contained in their applications for action electronically to the Member State administrations via the EDB through COPIS. This will save substantial costs for the customs officials and companies in registering data into the COPIS database.

The Observatory, the UK IP Office and the Commission co-organised the International IP enforcement summit (London, June 2014). Part of this summit was dedicated to "IP enforcement challenges at the border" with workshops dedicated to small consignments as a result of Internet orders and the exploitation of intelligence. The discussion identified the following elements:

- the critical importance of receiving adequate information and sharing with the police and other enforcement authorities;
- the growing need to cooperate and act internationally to tackle the international supply chains of counterfeit.

As a follow-up to the Summit, the Commission announced that the High Level Conference on the cooperation between customs, police and judicial authorities foreseen under action 4.2.1 of the Action Plan will take place next year.

The Commission and some Customs administrations also participated in OHIM/Europol events together with police and judicial authorities, such as the “Knowledge and Awareness Building Conference on infringements of intellectual property rights on the internet” (November 2014).

Conclusion

Cooperation with China, Hong-Kong China and with the Observatory on infringements of IPR provides a strong basis for progress in the years to come.

2015 will see the launching of the series of support visits to Member States on the implementation of Regulation (EU) No 608/2013, as well as the organisation of the High Level Conference between customs, police and judicial authorities, scheduled for December 2015.