

*This document is the European Union's proposal for a text. It was tabled for discussion with the US in the negotiating round of 20 -24 April 2015 and made public on 31 July 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

#### **Article XX – Customs enforcement of intellectual property rights<sup>1</sup>**

1. With regard to the customs enforcement of intellectual property rights each Party shall ensure consistency with its obligations under the GATT and TRIPS agreements and, in particular, with Article 41 and Section 4 of the Part III of TRIPS agreement.
2. Each Party shall have in place procedures to enable a right-holder to lodge an application with the customs authorities for the detention, in order to allow for the initiation of administrative or judicial proceedings for the formal determination of IPR infringements, of goods, under customs control<sup>2</sup>, which are, in accordance with the applicable law of the territory where the goods are found, suspected of being
  - counterfeit trade mark goods,
  - counterfeit geographical indication goods,
  - pirated copyright goods, or
  - devices, products or components which are primarily designed or produced for the purpose of circumventing technological protection measures put in place by the owner of copyrights or related rights and which is designed to protect such rights.
3. During the period of validity of a granted or recorded application for customs action, the customs authorities of each Party shall detain any suspected goods referred to in paragraph 2 they might identify and which are covered by such application.
4. In respect of goods under customs control which are suspected of involving an IPR infringement, other than those referred to in paragraph 2, in relation to trademarks, copyrights or related rights, industrial designs, patents, plant varieties, integrated circuits and geographical indications, each Party shall have in place:
  - a. The procedures referred to in paragraph 2; or
  - b. Procedures allowing the customs administration, upon receiving an application, to detain those goods on the basis of a decision taken by a judicial or other independent authority.
5. Each Party shall, in addition, have in place procedures allowing customs action on goods suspected of infringing intellectual property rights without prior application by a right holder.

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<sup>1</sup> Final wording will take account of the outcome of the discussion on the definition of substantive rights.

<sup>2</sup> For the purposes of this article, goods entering, placed or leaving free zones are considered goods under customs control.

6. Notwithstanding paragraphs 3 and 4, there shall be no obligation to apply those procedures to imports of goods put on the market in another country by or with the consent of the right-holder.
7. In respect of goods subject to customs control, the customs authorities shall carry out adequate controls in accordance with risk analysis criteria with a view to preventing acts in breach of intellectual property laws applicable in their territories and in order to cooperate on the customs enforcement of intellectual property rights. Those controls, other than random checks, shall primarily be based on risk analysis using electronic data-processing techniques.
8. In order to reduce the cost of storing, preserving, maintaining and handling goods suspected of infringing IPR, the Parties shall allow that those goods may be destroyed without there being any need to prior administrative or judicial proceedings for the formal determination of IPR infringement if the persons concerned agree or do not oppose to the destruction within time limits as provided for in national law.
9. The Parties shall have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express courier consignments.
10. The Parties shall establish exemptions from the provisions in this article in respect of goods of a non-commercial nature contained in the personal luggage of travellers.
11. The Parties shall have in place electronic systems for the management of applications for customs actions on goods infringing intellectual property rights.
12. The Parties shall provide appropriate training for their respective customs officials, in order to ensure the correct and effective implementation of border measures.
13. The Customs authorities shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.
14. The Parties agree to cooperation in respect of international trade in goods suspected of infringing intellectual property rights.  
In particular, the Parties agree to share data and information on trade in goods suspected of infringing intellectual property rights affecting both Parties. In addition to exchanging general information regarding seizures, trends and risk analysis, the customs administrations of each Party shall provide available specific information allowing the customs administration of the other Party to swiftly enforce intellectual property rights against shipments destined to its territory. The information shall be provided in full respect of the provisions on protection of personal data applicable in the territories of the Parties.
15. Without prejudice to other forms of cooperation, Protocol [to complete] on Mutual Administrative Assistance in Customs Matters will be applicable with regard to breaches of

legislation on intellectual property rights for the enforcement of which the customs authorities are competent in accordance with this article.

16. The [name of committee responsible for customs matters<sup>3</sup>] referred to in Article [to complete] of this Agreement shall be responsible to ensure the proper functioning and implementation of this Article. In particular, the [name of committee responsible for customs matters] will provide for the framework for organising cooperation, which could consist of:

a) providing for adequate procedures for the exchange of information;

b) promoting a coordinated approach in international negotiations and fora;

c) promoting of joint customs operations;

d) Holding a dialogue on specific topics of common interests, such as the:

- treatment of small parcels containing goods infringing intellectual property rights,
- costs and burdens resulting from customs actions for customs administrations, IP right holders, carriers and other intermediaries,
- use of risk analysis techniques,
- analysis of the implementation of IP border measures in third countries,
- due diligence by stakeholders in relation to the supply chain;

e) Carrying out a dialogue with private stakeholders.

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<sup>3</sup> Subject to the outcome of discussions on the committee structure in the general institutional chapter.