



European Communities Trade Mark Association

Fifth Meeting of the Sub-Group on Legal Framework of the European Counterfeiting and Piracy Observatory – Brussels – 26 February 2010

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The Fifth meeting of the Legal Sub-Group of the Observatory on Legal Framework set up within the European Counterfeiting and Piracy Observatory took place on 26 February 2010 in Brussels.

The different studies undertaken by the Observatory are well underway. As far as damages and legal costs are concerned, the study has been completed and Allen Dixon from BASCAP and Lisa Peets from BSA will summarise the study and come up with draft recommendations that will be circulated within the working group. As far as corrective measures are concerned the same work will be undertaken by Ann-Charlotte Söderlund from ECTA and SACG and Professor Cesare Galli from Indicam.

During the meeting, the members of the Sub-Group had an informal exchange of views on the practical working of border measures under Regulation 1383/2003 with the DG TAXUD representative John Taylor. This discussion focussed on the problems of “transit”, “*de minimis* rule” and “simplified procedure”.

As far as “transit” is concerned, John Taylor stressed that European customs are already competent to control suspect goods in all customs situations – including transit, transshipment and customs warehousing and that under the Border Measure Regulation they were allowed to suspend the release of suspect goods in all these customs situations to allow the right holder to intervene. Therefore, John Taylor considered that the current debate on whether the transit of fake goods infringes an intellectual property right did not relate to the Border Measures Regulation as a procedural rule but rather to substantive intellectual property law. He recognised that the Border Measure Regulation contained ambiguous language, in particular, with regard to a possible “manufacturing fiction” and pointed out that this language would be deleted in the draft of the next version of the Regulation.

He also explained that there is a threat from certain development countries to bring a WTO-panel against the EU because of the seizure of medicine lawfully produced in India and lawfully marketed in Brazil that would have infringed a patent in the EU. He stressed that the political pressure due to the threat of a WTO-panel was very high and that it was only possible to prevent a dispute provided the Border Measure Regulation was reviewed soon. Therefore, DG TAXUD is planning to submit a first draft of the new Regulation before the summer 2010. This draft will also contain modifications as to the “*de minimis* rule”, as the Commission recognises that the current exception is not satisfactory. Furthermore, the draft will contain a mandatory simplified procedure.

John Taylor has agreed to update the Group on further developments and his DG will participate in further discussions of the Observatory.