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NOTE

from: French Presidency

to : Customs Cooperation Working Party

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Subject: Measures to combat counterfeiting
- Role and activities of customs authorities

Counterfeiting, originally small-scale or occasional, has become an industrial and international phenomenon which must be combated. More than 60 countries are involved in this activity, which is estimated to be worth more than 500 thousand million francs, or 5 to 6% of world trade, and has disastrous economic and social consequences.

Efforts to combat counterfeiting and its international networks are, however, particularly complicated by the disparity between the relevant national laws within the European Union and the diversity of the authorities responsible for dealing with this type of crime.

Customs authorities are the best placed to act in the field of counterfeiting, owing to their presence at the external borders and their role, one of the most important aspects of which is to ensure fair international trade.

Community Regulation No 3842/86 of 1 December 1986, which prohibits the release for free circulation in the Community of counterfeit goods, accordingly made customs authorities responsible for ensuring compliance with that ban.

The role of the latter has moreover been strengthened by the new Community Regulation No 3295/94 of 22 December 1994 which extends the customs authorities' field of operation to include all intellectual property rights (except for patents) and the circumstances in which it may act to include export and transit.

Administrative cooperation to combat traffic in counterfeit and pirated goods as referred to in the above Community legislation is governed in particular by Regulation (EEC) No 1468/81 on mutual assistance. The latter will shortly be replaced by a new Regulation which will enable a data base to be established which will include all useful operational information concerning traffic in counterfeit and pirated goods.

Customs cooperation falling within Title VI of the Treaty on European Union could be intensified in order to combat counterfeiting more effectively at Community level. The Customs Cooperation Working Party should therefore be mandated to propose specific measures in this connection, such as the following:

- Because they are present at the borders, customs authorities intercept the flow of goods and travellers. Their role is to monitor the import and export of goods from or to third countries and Member States. They are therefore in the best position to prevent counterfeit goods from entering or leaving and have a privileged relationship with the companies which suffer injury. In order to curb the development of counterfeiting, it would therefore seem important to take preventive measures at the level of the undertakings which may become its victims.

The Union's customs authorities must therefore make companies at risk from this type of fraud aware of the need to cooperate. They must encourage them to lodge applications for action even where this is not obligatory, so that the customs authorities are aware of the existence of counterfeits of their trade marks and products and they should provide the identification details necessary for such counterfeits to be discovered.

- Combating counterfeiting and its international networks requires increased cooperation between customs authorities, in particular by improving the collection and exchange of information, within the framework of existing or future legal instruments.

Other forms of cooperation will be studied in close cooperation with the other competent authorities.
