Council of the European Union

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (first reading) - Adoption a) of the Council's position b) of the statement of the Council's reasons = Statements

Statement by the Netherlands delegation

Although the Netherlands welcomes many elements of the proposed trademark reform package, which will make the new system more accessible, efficient and less costly, it wishes to express – again - our grave concerns regarding the proposed provisions on goods in transit (Article 10 paragraph 5 of the Directive and Article 9 paragraph 5 of the Regulation as well as their corresponding recitals).

These provisions will introduce the possibility to detain goods on account of possible infringement of a national or EU-trademark, where those goods are merely in transit through EU-territory.

The Netherlands believes that the proposed measure will put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines. The Netherlands has had a negative experience in 2008 with detaining medicines in transit and does not want that to happen again.

Although the Netherlands supports the battle against counterfeiting as this undermines trade, IP-rights etc., the proposed measure for detaining goods in transit is unacceptable for The Netherlands. Against this background the Netherlands will abstain from voting on the trademark reform package.

Statement by the United Kingdom

The UK has always provided strong support for the package of EU trade mark reforms, which will deliver real benefits for trade mark users. However, we cannot support the Regulation since it includes a provision that enables the transfer of future surpluses accumulated from trade mark and design fees to the general EU budget. Research has suggested that IP rich industries contribute 39% of the EU's GDP, with trade marks a significant part of this. We must nurture and protect this contribution to retain our competitiveness: therefore we should not divert money which came from IP to other uses. It should stay in the system, for example supporting innovation or enforcement.