

# India weighs in with 11th hour criticism of EU trademark reform plans

19

OCT 15

One of the more contentious aspects of the EU's proposed trademark reform package bubbled to the surface again last week as an unnamed Indian official reiterated the government's concern over the issue of goods in transit. The comments were a late-stage entry into the debate over the measures, the final draft of which was approved by the Council of the European Union last June. Although the criticism may be unlikely to affect the final shape of the legislation, the issue is likely to remain a sticking point in free trade negotiations and other interfaces between Europe and India.



**Jacob Schindler**

As this blog has previously reported, the proposed new Trademarks Directive and CTM Regulation strengthen the ability of customs officials to seize goods transiting the EU on grounds of trademark infringement. India reportedly fears that this power will be used to hold up or confiscate shipments of generic drugs bound for Latin America and Africa via EU ports. Such seizures were the subject of a WTO dispute between India and the EU which was settled in 2011, but the shipments in question were detained based on patent rights, not trademarks. "We are protesting because trademarks can be confused with patents by customs officials, which could lead to confiscation of generic medicines", an Indian official claimed, adding that the European Commission had not replied to the government's objections.

The Netherlands, whose customs service made the seizures which led to the WTO case back in 2008, came out against the provisions in June, saying they would "put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines". Nevertheless, the country's representatives did endorse the overall package.

Close observers of the reform process expect the package to be unaffected. Tove Graulund, past MARQUES chairman and principal of Graulund Consulting, told *World Trademark*

principal of Graulund Consulting, told *World Trademark Review*: “It took a long while for this particular issue to reach a compromise that almost all member states could agree to. I think that it is very unlikely that it will be opened again. I do hope not, because it would stop the whole process. But I really cannot imagine that this would happen.” Graulund also points out that the measures are not specifically targeted at generics makers, saying reformers “at no point had the intention to stop generic medicines in transit. The user organisations have only ever worked to have sufficient measures to stop counterfeits”.

The late entry into the debate for India may have arisen from a fresh spat with European regulators over generic medicines. In July, the EU suspended the sale of 700 generic drugs tested at Hyderabad-based GVK Biosciences, alleging manipulation of clinical trial data. In response, India recently called off talks over a free trade agreement being pushed for by European leaders. According to Vikram Grover of Groverlaw in Delhi, “there is real worry among Indian officials about unilateral decisions taken by European authorities. If a certain manufacturer can have 700 products banned overnight, obviously India is concerned over the ambit of the reforms”.

Though they might not have much hope of affecting the reform process, Indian authorities likely intend to send a strong signal that they will be closely monitoring how the new rules are enforced in practice. Indian practitioners say the text of the law itself is not a cause for alarm, but its implementation will be subjected to close scrutiny. For generic producers, the amendments may warrant extra caution in the early going. “Packaging accompanying shipments should be clear and straightforward, stating that the accepted chemical name of the medicine is not a trademark in any jurisdiction in the world so as to prevent interdiction,” suggests Grover.

It’s one more chapter of a long-running debate, but if the compromise transshipment rules are enforced the way supporters say they will be, then counterfeiters are likely the only parties who need to worry about them.

---

## Channels

International

Policy

Government/policy

---

## Comments

Add a comment

There are no comments on this article