

FIATA

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Position Paper:

“Intellectual Property Rights”

FIATA is a non-governmental organisation which represents the interests of the vast majority of logistics and international freight forwarders services enterprises. FIATA has consultative status with several United Nations bodies and is recognized by many inter-governmental, governmental and private organizations worldwide.

In the role they play as organizers of the supply chain and principals of customs transit procedures, our Members - approximately 40.000 companies employing around 8 to 10 million people in 150 countries - have a specific interest in the rules and procedures governing international transit.

This paper provides FIATA's position on the aspect of liability of service providers to international trade logistics and supply chain management as to infringement of intellectual property rights arising from counterfeit and/or pirated goods detained by regulatory agencies at borders.

FIATA is aware as to the social, economic and in particular health impact of counterfeit and pirated goods from the misuse of holders rights to intellectual property and supports regulatory intervention in such circumstances.

FIATA however notes with concern the position adopted in discussion by the European Union and a number of other World Trade Organization members in the development work on a new international agreement titled the Anti – Counterfeit Trade Agreement (ACTA) and as to the liability arising in that agreement to services providers in international freight forwarding.

FIATA's position is that the party responsible for the protection of its Intellectual Property Rights (IPR), in particular as to any costs related to storage and/or destruction of goods found to be in breach of IPR at the border, must be to the account of that IPR holder.

International freight forwarders cannot be held responsible for the assessment of IPR infringement for a variety of legal and contractual reasons including, *inter alia*:

- IPR issues are not the responsibility of the service provider in the contract of carriage.
- goods, in the main, cannot be sighted or verified as contracts and regulation (customs, security) do not allow the for the opening, altering or interfering with consignments
- information received and provided to regulators by service providers is based upon that supplied by the consignor/consignee or other third party(ies)
- IPR verification is not a business requirement of service providers and, in the main, only the rights holder(s) themselves can undertake that verification.

FIATA does not support a position where the service provider is, in any way, held liable for the maintenance of an IPR holder's commercial position. It does however support the general thrust of the ACTA.

FIATA looks forward to those charged with developing the ACTA and, any other appropriate agreement to meet IPR aspects, that the rights of legitimate traders and their service providers are considered accordingly.

For more detailed information please contact FIATA.

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