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Border Measures Provisions of Counterfeiting: A Comparison Study of TRIPs, NAFTA and Taiwan Trademark Law

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Abstract

This Article tries to compare the regulations of border measures among TRIPs Agreement, NAFTA and Taiwan Trademark Law. The TRIPs Agreement distinguishes between infringement, for which civil judicial procedures and remedies must be available, and counterfeiting and piracy. In the case of counterfeiting, additional procedures and remedies, including border measure, must be made available. Special requirements related to border measures are contained in Section 4 (Article 51-Article 60) of the enforcement part of the TRIPs Agreement. Parties must, under Article 51, provide border enforcement procedures for goods bearing a counterfeit. Taiwan Trademark Law has been amended in order to enable Taiwan to meet the requirement of TRIPs Agreement in 2003. NAFTA (North American Free Trade Agreement) is the most important Free Trade Agreement (FTA), and when Taiwan tries to establish FTA with U.S., NAFTA may be a model.

This article attempts to examine how the border measures provisions of counterfeiting might be incorporated into the existing Custom regulations. This article explains relation of border measures provisions of counterfeiting and trade policy, and compares border measures provisions of counterfeiting among TRIPs, NAFTA, and Taiwan Trademark Law. The conclusions of this Article as

follow:

I. Notice of suspension among TRIPs, NAFTA and Taiwan Trademark Law is similar but duration of suspension is different. Prima facie evidence is very important regulation in TRIPs, NAFTA, but Taiwan Trademark Law did not mention the Prima facie evidence.

II. Customs services may take action on their own action on their own initiative (ex officio action) under Article 58 based upon prima facie evidence that an intellectual property right is being infringed, which is not regulated in 2003 Trademark Law of Taiwan. It is worth noticing that ex officio action may become a trend when establishing FTA with Taiwan.

Keywords: Border Measures, Counterfeiting, TRIPs, NAFTA, Trademark Law