



## Customs enforcement of intellectual property rights

During the past ten years the number of shipments detained due to suspected infringement of intellectual property rights (IPR) has been rising sharply. To prevent counterfeits from entering the EU market, the European Commission (EC) has proposed to revise existing customs regulation by broadening its scope and simplifying procedures for their destruction.

### Facts and figures

IPR includes all exclusive rights to intellectual creations: [industrial property](#), i.e. inventions (patents), trademarks, industrial designs and models and geographical indications, and [copyright](#), on artistic and literary works. The value of the top ten brands in each EU country [corresponds](#) to almost 10% of GDP on average. The creative industry [estimates](#) that counterfeiting caused losses of €10 billion and of more than 185 000 jobs in 2008 alone. EC customs statistics [show](#) an upward trend in the number of shipments suspected of violating IPR: in 2011, goods were detained in more than 91 000 cases (with a domestic retail [value](#) of €1.3 billion). This is a 15% increase over 2010, and tenfold over the last decade. Almost 24% of detained articles were medicines, followed by packaging materials (21%) and cigarettes (17%). Approximately 73% came from China.

### Existing EU provisions

Customs enforcement of IPR is covered by [Regulation](#) (EC) No 1383/2003, which outlines the procedures for (1) rights-holders to lodge applications with customs authorities for action (e.g. detention) on suspected counterfeit goods, and (2) the destruction of goods deemed fraudulent. The [EU action plan](#), [endorsed](#) by the Council, outlines the strategy for combating IPR infringements.

### Revision of legislation

After a [public consultation](#), the Commission proposed a revised [Regulation](#) in 2011. This extends the list of possible IPR infringements that can be checked at borders (e.g. lookalike trademarks or [parallel trade](#), when a product intended for one market is shipped to

another). It also extends the categories of goods to which protected rights apply (e.g. trade names, [non-agricultural geographical indications](#)), makes it mandatory to destroy counterfeit goods in all EU Member States and introduces a simplified procedure (without prior legal proceedings) for the destruction of goods (including in small consignments, whose number has surged with online trading).

In its first reading [resolution](#) of 3 July 2012, the EP stipulated that the Regulation should also apply to goods in transit suspected of infringing IPR. MEPs supported extending the simplified procedure to all IPR infringements, enhancing cooperation with third countries and implementing computerised systems for submitting applications.

The Internal Market Committee then voted to seek an early second reading agreement. On 16 May, the Council adopted the text jointly agreed in December. The Committee voted on 30 May to recommend to plenary to accept the text without amendment. The main topics discussed in trilogue were: goods in transit, including generic medicines; simplified procedure; special procedure for small consignments, right to be heard and data protection.

### Stakeholder views

The [pharmaceutical industry](#) welcomes the revision and invites customs and health authorities to cooperate to prevent entry of the unsafe medicines. [Brands and trademark associations](#) complained that not covering goods in transit not destined for the EU market in the EC proposal will be detrimental to the global fight against counterfeiting. They also [suggest](#) extending the scope of the Regulation to goods of a non-commercial nature contained in travellers' luggage and argue for customs intervention even when right-holders have not initiated legal action. [Practitioners](#) reason that the simplified procedures in the new rules will strengthen patent-holders' rights. The [Swedish Pirate Party](#) claims that the tightened rules will be damaging to consumers and online trade.