Commission proposal for a Regulation concerning customs enforcement of intellectual property rights
What is the European Commission proposing?

- Proposal for a Regulation of the European Parliament and the Council concerning customs enforcement of intellectual property rights

- The proposal would replace Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.
Background - What does customs do on IPR enforcement?

- Use risk assessment to identify suspect consignments
- Check goods for possible infringements of IPR
- Cooperate with right holders
- Ensure interests of all legitimate traders are taken into account
- Action limited to identifying and detaining shipments
- Facilitate simplified destruction of infringing goods
Number of registered cases 2000-2010
Why the change?

- Council Resolution on a comprehensive European anti-counterfeiting and anti-piracy plan (2008) - Review
- Impact Assessment – Public consultation
- Trade in IPR infringing goods has evolved
- Increase in range of products and rights being infringed
- Methods of distribution
- Legal clarification
Impact Assessment – Problems and policy options

■ Three problems:
  - Problem I: some IPRs are not currently covered by the Regulation
  - Problem II: burdensome administrative procedures, e.g. simplified procedure not implemented in all MS, small consignments
  - Problem III: certain administrative procedures could be interpreted in a manner leading to an unbalanced approach towards the different legitimate stakeholders

■ Three policy options modulated according to each problem and assessment criteria:
  - Baseline scenario
  - Use of non-legislative instruments, or
  - Amendment of Regulation 1383/2003

■ Impacts difficult to measure due to lack of reliable data on the scale of trade in IPR infringing goods
Significant elements of the proposal

- More infringements, more rights covered
- Clarification of the *procedural* nature of the regulation
- Better definition of the administrative procedures
- Simplified destruction of goods
- Specific procedure for small consignments
- Scope of customs intervention (transit/medicines)
- Costs of storage and destruction
- Implementing provisions/delegated acts
- Non-commercial goods in travellers luggage
Chapter I – Subject matter, scope and definitions

- Scope of customs intervention (including all customs procedures)
- Procedural nature of the Regulation
- Travellers' luggage
- Definitions (types of rights, suspicion)
What rights are covered?

- Trademarks
- Designs
- Copyrights
- Geographical indications
- Patents
- Plant variety rights
- Topographies of semiconductors
- Utility models
- Trade names
- Parallel trade
- Overruns
Chapter II – Applications for action by customs

- Basic system already well established:
  - submission of an application
  - processing of applications
  - customs decision whether to grant application
  - notification obligations

- Clarification of certain conditions:
  - customs decisions within time limits
  - ex-officio

- Undertaking to bear costs, Article 6.3(n)
Chapter III – Action by customs

- Basic system already well established:
  - detention / suspension of release
- Right to be heard
- Notification to parties:
  - both parties
  - timelines
- Simplified destruction:
  - counterfeit and pirated goods
  - others
- Anticipated release of goods
- Specific procedure for small consignments (conditions, costs, definition of 'small consignments')
What is the concern about small consignments?

Number of registered cases by means of transport during the period 2005-2010
Chapter IV - Liability, costs and penalties

- Liability of customs
- Liability of holder of the decision granting the application
- Costs
Chapter V – Committee, delegation and final provisions

- Implementing act
- Delegated act
- Exchange of data
- Final provisions
Commission proposal for a new Regulation concerning border enforcement of IPR

Thank you for your attention

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