Amendment 122
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Recital 3

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of intellectual property rights, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas.</td>
<td>(3) The review of Regulation (EC) No 1383/2003 showed that certain improvements to the legal framework were necessary to strengthen the enforcement of selected intellectual property rights, particularly trademark and copyright, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas. That review also showed that border measures should not be applicable to other intellectual property rights, particularly patents and supplementary protection certificates for medicinal products where proper determination of infringement is dependent on highly technical judicial proceedings. Likewise, it was determined that border measures should not be applied to goods-in-transit.</td>
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Or. en
(4) The customs authorities should be able to control goods, which are or should have been subject to customs supervision in the customs territory of the Union, with a view to enforcing intellectual property rights. Enforcing intellectual property rights at the border, wherever the goods are, or should have been, under ‘customs supervision’ as defined by Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, makes good use of resources. Where goods are detained by customs at the border, one legal proceeding is required, whereas several separate proceedings would be required for the same level of enforcement for goods found on the market, which have been disaggregated and delivered to retailers. An exception should be made for goods released for free circulation under the end-use regime, as such goods remain under customs supervision, even though they have been released for free circulation. It is also appropriate not to apply the Regulation to goods carried by passengers in their personal luggage as long as these goods are for their own personal use and there are no indications that commercial traffic is involved.

Or. en
Amendment 124
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements, such as infringements resulting from parallel trade, as well as other infringements of rights already enforced by customs authorities but not covered by Regulation (EC) No 1383/2003. For the same purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, trade names in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products, utility models and devices to circumvent technological measures, as well as any exclusive intellectual property right established by Union legislation.

Amendment

(5) Regulation (EC) No 1383/2003 does not cover certain intellectual property rights and excludes certain infringements. In order to ensure efficient enforcement of intellectual property rights, customs control should target selected infringements. For that purpose it is appropriate to include in the scope of this Regulation, in addition to the rights already covered by Regulation (EC) No 1383/2003, particular devices designed to circumvent technological protection measures (TPMs).

Or. en
27.6.2012

Amendment 125
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) In order to ensure the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate evidence, that goods under their supervision infringe intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs authorities to initiate proceedings for determining whether an intellectual property right has been infringed.

Amendment

(10) In order to ensure effective and lawful enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate indications resulting from the applicable legal procedures, that goods under their supervision infringe relevant intellectual property rights, those customs authorities may suspend the release or detain the goods whether at their own initiative or upon application, in order to enable the persons entitled to submit an application for action of the customs authorities to initiate proceedings for determining whether such intellectual property rights have been infringed.

Or. en
Recital 17

Text proposed by the Commission

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all. In particular with regard to medicines the passage of which across this territory of the European Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, customs authorities should, when assessing a risk of infringement of intellectual property rights, take account of any substantial likelihood of diversion of these goods onto the market of the Union.

Amendment

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all. It is therefore of particular importance that customs authorities ensure that any measures taken by them are in line with the Union’s international commitments and its development cooperation policy under Article 208 TFEU, and do not detain or suspend the release of generic medicines the passage of which across the territory of the Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, is only a portion of a complete journey beginning and terminating beyond the territory of the Union, where there is no clear and convincing evidence that they are intended for sale in the Union.
Justification

Amendment necessary to be in line with the last judgements of the ECJ on goods in transit (the Nokia and Philips cases). The interruption of medicines supply chains, even temporarily, has grave consequences for patients, especially in developing countries and in the case of patients with chronic illnesses who must take medicines at regular intervals.
Recital 17 a (new)

(17a) Medicines that bear a false trademark or trade description misrepresent their origin and quality level and thus should be treated as falsified medicines under Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products.

Adequate measures should be taken to prevent such products from reaching patients and consumers, without hindering legal generic medicine from transiting the customs territory of the Union. By ...* the Commission should present a report analysing the effectiveness of current customs measures aimed at combating trade in falsified medicines, and the possible negative impact on the access of generic medicine in relation to this.

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1 OJ L 174, 1.7.2011, p. 74.

* OJ: please enter the date 24 months after the date of entry into force of this Regulation.
Justification

Legitimate generic medicines should under no circumstances be treated as falsified medicines.
27.6.2012 A7-0046/128

Amendment 128
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 1 – paragraph 4 a (new)

Text proposed by the Commission

4a. This Regulation shall not apply to goods-in-transit, meaning products passing across the territory of the Union, with or without transshipment, warehousing, breaking bulk, or changes in the mode or means of transport, for which transit through the Union is only a portion of a complete journey beginning and terminating beyond the territory of the Union.

Or. en

Justification

The regulation should not apply to products, especially medicines, transiting through the territory of the EU, for which transit through the EU is only a portion of a complete journey beginning and terminating beyond the territory of the EU, if not clear evidence is given of entry into the internal market.
Amendment 129
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission


deeded

Amendment

Or. en
Amendment 130
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 2 – paragraph 1 – point 1 – point e

Text proposed by the Commission

Amendment

(e) a patent as provided for by the legislation of a Member State;

deleted

Or. en

Justification

Patents should be excluded from the scope of the regulation. Any potential commercial benefits that IP holders could derive from the detention of competitor's medicines at the boarder cannot offset the damage to public health should legitimate generic medicines be targeted.
Amendment 131
Christian Engström, on behalf of the Greens/EFA Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 2 – paragraph 1 – point 1 – point f

Text proposed by the Commission

 Artikel 2 – paragraph 1 – point 1 – point f

(f) a supplementary protection certificate for medicinal products as provided for in Regulation (EC) No 469/2009 of the European Parliament and of the Council16;

Amendment

(f) a supplementary protection certificate deleted

Or. en

Justification

Patents should be excluded from the scope of the regulation. Any potential commercial benefits that IP holders could derive from the detention of competitor's medicines at the boarder cannot offset the damage to public health should legitimate generic medicines be targeted.
27.6.2012                     A7-0046/132

Amendment 132
Christian Engström, on behalf of the Greens/EFA Group

Report                     A7-0046/2012
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 2 – paragraph 1 – point 1 – point g

Text proposed by the Commission Amendment

(g) a supplementary protection certificate deleted
for plant protection products as provided
for in Regulation (EC) No 1610/96 of the
European Parliament and of the
Council17;

Or. en