Amendment 152
Mikael Gustafsson
on behalf of the GUE/NGL 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
Amendment 153
Mikael Gustafsson
on behalf of the GUE/NGL Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
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.

Or. en
Text proposed by the Commission

(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 products1. 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.

1 OJ L 174, 1.7.2011, p. 74.

*OJ: please insert the date: 24 months after the date of entry into force of this Regulation.
Amendment 155
Mikael Gustafsson
on behalf of the GUE/NGL Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

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

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>Or. en</td>
</tr>
</tbody>
</table>
Amendment 156
Mikael Gustafsson
on behalf of the GUE/NGL 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
27.6.2012

Amendment 157
Mikael Gustafsson
on behalf of the GUE/NGL 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

Amendment

(f) a supplementary protection certificate deleted
for medicinal products as provided for in
Regulation (EC) No 469/2009 of the
European Parliament and of the
Council16;
Amendment 158
Mikael Gustafsson
on behalf of the GUE/NGL Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

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

Text proposed by the Commission

Amendment

(m) any other right that is established as an exclusive intellectual property right by Union legislation;

deleted

Or. en
Amendment 159  
Mikael Gustafsson  
on behalf of the GUE/NGL Group  

Report  
Jürgen Creutzmann  
Customs enforcement of intellectual property rights  

Proposal for a regulation  
Article 2 – paragraph 1 – point 5 – point a  

Text proposed by the Commission  

(a) goods which are subject of an action infringing a trade mark and bear without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;  

Amendment  

(a) any goods, including packaging, bearing without authorisation a trade mark identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark, and which thereby infringes the rights of the owner of the trademark in question in the country of import;  

Or. en
Amendment 160
Mikael Gustafsson
on behalf of the GUE/NGL Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 2 – paragraph 1 – point 7 – introductory part

Text proposed by the Commission
(7) ‘goods suspected of infringing an intellectual property right’ means goods with regard to which there is adequate evidence to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Amendment
(7) ’goods suspected of infringing an intellectual property right’ means goods with regard to which there are adequate indications on the basis of the applicable legal procedures to satisfy customs authorities that, in the Member State where these goods are found, are prima facie:

Or. en
27.6.2012

Amendment 161
Mikael Gustafsson
on behalf of the GUE/NGL Group

Report
Jürgen Creutzmann
Customs enforcement of intellectual property rights

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

Without prejudice to Article 8 of Regulation (EC) No 864/2007\textsuperscript{25}, the law of the Member State where the goods are found in one of the situations referred to in Article 1(1) shall apply for the purpose of determining whether the use of those goods gives rise to suspicion of infringement of an intellectual property right or has infringed an intellectual property right.

Amendment

Without prejudice to Article 8 of Regulation (EC) No \textit{864/2007}\textsuperscript{25}, the law of the Member State where the goods are found in one of the situations referred to in Article 1(1) shall apply for the purpose of determining whether the use of those goods gives rise to suspicion of infringement of an intellectual property right or has infringed an intellectual property right. \textit{The law of the Member State may not be applied to goods-in-transit, unless there is clear and convincing evidence of imminent, intended entry into Union commerce, meaning intended sale to and consumption by Union residents. In no instance shall a Member State determine the intellectual property status of the challenged goods on the basis of the assumption that those goods were manufactured in that Member State (‘manufacturing fiction’).}

Or. en
27.6.2012 A7-0046/162

Amendment 162
Mikael Gustafsson
on behalf of the GUE/NGL Group

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

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission

3. Before adopting the decision of
   suspension of release or detention of the
goods, the customs authorities shall,
communicate their intention to the
declarant or, in cases where goods are to be
detained, the holder of the goods. The
declarant or the holder of the goods shall
be given the opportunity to express his/her
views within three working days of

Amendment

3. Before adopting the decision of
   suspension of release or detention of the
goods, the customs authorities shall,
communicate their intention to the
declarant or, in cases where goods are to be
detained, the holder of the goods before
suspending the release or detaining the
goods. The declarant or the holder of the
goods shall be given the opportunity to
express his/her views within five working
days of receipt of that communication.

Or. en
Amendment 163
Mikael Gustafsson
on behalf of the GUE/NGL Group

Proposal for a regulation
Article 37 – paragraph 3 a (new)

Text proposed by the Commission

By ...* the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation, as well as an analysis of this Regulation's impact on the availability of generic medicines, in the Union as well as globally. If necessary, that report shall be accompanied by appropriate proposals and/or recommendations.

* OJ: please insert the date: 36 months after the entry into force of this Regulation.

Amendment

Or. en