REPORT

on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights
(COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Jürgen Creutzmann

Rapporteurs for the opinion (*):
Joséa Andrés Barea, Committee on International Trade
Marielle Gallo, Committee on Legal Affairs

(*) Associated committees — Rule 50 of the Rules of Procedure
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in **bold italics**. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...]
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(* ) Associated committees — Rule 50 of the Rules of Procedure
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council
concerning customs enforcement of intellectual property rights
(COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council
  (COM(2011)0285),

– having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the
  European Union, pursuant to which the Commission submitted the proposal to Parliament
  (C7-0139/2011),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to Rule 55 of its Rules of Procedure,

– having regard to the report of the Committee on the Internal Market and Consumer
  Protection and the opinions of the Committee on International Trade and the Committee
  on Legal Affairs (A7-0046/2012),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its
   proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council, the Commission and the
   national parliaments.

Amendment 1

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) The marketing of goods infringing intellectual property rights does
considerable damage to right-holders, law-abiding manufacturers and traders. It is
also deceiving consumers, and could in some cases endanger their health and
safety. Such goods should, in so far as is possible, be kept off the market and

Amendment

(2) The marketing of goods infringing intellectual property rights does
considerable damage to right-holders, law-abiding manufacturers and traders. It is
also deceiving consumers, and could in some cases endanger their health and
safety. Such goods should, in so far as is possible, be prevented from entering the
measures should be adopted to deal with this unlawful activity without impeding legitimate trade. For this reason, consumers need to be well-informed about the risks involved in purchasing those goods.

Amendment 2
Proposal for a regulation
Recital 3

Text proposed by the Commission

(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.

Amendment

(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 by customs authorities, as well as to ensure appropriate legal clarity, thereby taking into account developments in the economic, commercial and legal areas.

Amendment 3
Proposal for a regulation
Recital 4

Text proposed by the Commission

(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

Amendment

(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, including goods placed under a suspensive procedure, 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
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.

Amendment 4
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 strengthen the enforcement of intellectual property rights, customs control should therefore be extended to other types of infringements not covered by Regulation (EC) No 1383/2003. 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, 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
Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Member States should commit sufficient resources to enable customs authorities to carry out their extended responsibilities and provide appropriate training for customs officials. The Commission and Member States should adopt guidelines to ensure the correct and uniform implementation of customs controls for the different types of infringements covered by this Regulation.

Justification

To alleviate concerns with regard to customs authorities' ability to effectively carry out their obligations related to the new types of infringements included in the scope of the regulation, it is useful to underline the importance of allocating sufficient resources, providing appropriate training as well as developing guidelines to assist customs authorities in carrying out the necessary controls.

Amendment 6
Proposal for a regulation
Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) This Regulation, when fully implemented, should further contribute to a single market which ensures more effective protection to rights-holders, fuels creativity and innovation and provides consumers with reliable and high-quality products, which should in turn strengthen cross-border transactions between consumers, businesses and traders;

Amendment 7

PE470.069v03-00 8/95 RR\898122EN.doc

EN
Proposal for a regulation
Recital 5 c (new)

Text proposed by the Commission

(5c) The Commission should take all measures necessary to ensure harmonised application, without unnecessary delay, by the customs authorities of the new legal framework throughout the Union to ensure efficient enforcement of intellectual property rights, which would protect right-holders without hampering trade. The implementation of the Modernised Customs Code and in particular an inter-operable 'eCustoms' system could, in the future, facilitate such enforcement.

Amendment 8

Proposal for a regulation
Recital 5 d (new)

Text proposed by the Commission

(5d) Member States face increasingly limited resources in the field of customs. Therefore, any new regulation should not result in additional financial burdens for national authorities. The promotion of new risk management technologies and strategies to maximise resources available to national authorities should be supported.

Amendment 9

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) This Regulation contains procedural rules for customs authorities. Accordingly, this Regulation does not introduce any new criterion for ascertaining the existence of
of an infringement of the intellectual property law applicable.

Justification

Consistent with the objective to maintain a clear delineation between procedural and substantive IP law, the Regulation should not set out any criterion for determining an IPR infringement. Any existing provisions that could be interpreted in such a way should be deleted.

Amendment 10

Proposal for a regulation
Recital 10

Text proposed by the Commission  Amendment

(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.

(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 having sufficient reason to believe this, 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 11

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission  Amendment

(10a) Where goods in transit are suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right, the declarant
or holder of the goods should bear the burden of proving the final destination of the goods. The final destination of the goods should be presumed to be the market of the Union in the absence of clear and convincing evidence to the contrary provided by the declarant, holder or owner of the goods. The Commission should adopt guidelines which will provide criteria for customs authorities to effectively assess their risk of deviation onto the market of the Union, taking into account the relevant case-law of the Court of Justice of the European Union.

Amendment 12
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

Amendment

deleted

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods
also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 13
Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) Regulation (EC) No 1383/2003 allowed Member States to provide for a procedure allowing the destruction of certain goods without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed. As recognised in the European Parliament Resolution of 18 December 2008 on the impact of counterfeiting on international trade, this procedure has proved very successful in the Member States where it has been available. Therefore, such procedure should be made compulsory for those visible infringements that are easy to identify upon mere visual examination by the customs authorities and should be applied at the right-holder's request, where the declarant or holder of the goods does not object to destruction.

Amendment

(12) Regulation (EC) No 1383/2003 allowed Member States to provide for a procedure allowing the destruction of certain goods without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed. As recognised in the European Parliament Resolution of 18 December 2008 on the impact of counterfeiting on international trade, this procedure has proved very successful in the Member States where it has been available. Therefore, such procedure should be made compulsory with regard to all infringements and should be applied at the right-holder's request, where the right-holder has confirmed the infringement of an intellectual property right and agreed to the destruction and where the declarant or holder of the goods does not object to destruction.

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). In addition to confirming his/her agreement to destruction, the right-holder should also confirm that an IPR has been infringed and indicate which IPR is concerned to ensure his/her liability for the destruction.

Amendment 14
Proposal for a regulation
Recital 13
(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 15
Proposal for a regulation
Recital 14

(14) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.
Amendment 16
Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) For further legal clarity and in order to
protect the interests of legitimate traders
from possible abuse of the border
enforcement provisions, it is appropriate to
modify the timelines for detaining goods
suspected of infringing an intellectual
property right, the conditions in which
information about consignments is to be
passed on to right-holders by customs
authorities, the conditions for applying the
procedure allowing for destruction of the
goods under customs control for suspected
infringements of intellectual property
rights other than for counterfeit and
pirated goods and to introduce a provision
allowing the holder of the goods to express
his/her views before the customs
administration takes a decision which
would adversely affect him/her.

Amendment

(15) For further legal clarity and in order to
protect the interests of legitimate traders
from possible abuse of the border
enforcement provisions, it is appropriate to
modify the timelines for detaining goods
suspected of infringing an intellectual
property right, the conditions in which
information about consignments is to be
passed on to right-holders by customs
authorities, and the conditions for applying
the procedure allowing for destruction of
the goods under customs control for
suspected infringements of intellectual
property rights. Where customs authorities
take action following the granting of an
application, it is also appropriate to
introduce a provision allowing the holder
of the goods to express his/her views
before the customs administration
suspends the release or detains goods
suspected of infringing intellectual
property rights that are not counterfeit or
pirated goods, as it may be difficult for
customs authorities to determine upon
mere visual examination whether an
intellectual property right might be
infringed.

Amendment 17
Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) Taking into account the provisional
and preventive character of the measures
adopted by the customs authorities in this
field and the conflicting interests of the
parties affected by the measures, some

Amendment

(16) Taking into account the provisional
and preventive character of the measures
adopted by the customs authorities in this
field and the conflicting interests of the
parties affected by the measures, some
aspects of the procedures should be adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, that period should be significantly extended.

Amendment 18
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

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. 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 19

Proposal for a regulation
Recital 17 a (new)

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 products. Adequate measures should be taken to prevent such products and other health products bearing a false trademark or trade description from reaching patients and consumers. By * the Commission should present a report analysing the effectiveness of current customs measures aimed at combating trade in falsified medicines.

\[1 \text{OJ L 174, 1.7.2011, p. 74.}
\]

\(*\text{OJ: please insert the date: 24 months after the date of entry into force of this Regulation.}\)

Amendment 20
Proposal for a regulation
Recital 17 b (new)

\text{Text proposed by the Commission} \quad \text{Amendment}

(17b) In order to step up action against infringements of intellectual property rights, the European Observatory on Counterfeiting and Piracy should play an important role in providing customs authorities with useful information enabling them to act quickly and effectively.

Amendment 21
Proposal for a regulation
Recital 17 c (new)

\text{Text proposed by the Commission} \quad \text{Amendment}

(17c) Countering intellectual property rights infringements at the Union's external borders should be combined with targeted efforts at source. This requires cooperation both with third countries and
at international level, where the Commission and Member States should build respect and promote high standards of protection for intellectual property rights. This should consist of endorsing the inclusion and enforcement of intellectual property rights in trade agreements, of technical cooperation, of encouraging discussion in the various international fora, of communication and exchange of information, as well as of further steps in operational cooperation with third countries and the industries concerned.

Justification

Countering intellectual property right infringements should benefit from enhanced bilateral cooperation as well as coordinated international action.

Amendment 22

Proposal for a regulation
Recital 17 d (new)

Text proposed by the Commission

(17d) With a view to eliminating international trade in goods infringing intellectual property rights, Article 69 of the TRIPS Agreement provides that WTO Members are to promote the exchange of information between customs authorities on trade in goods infringing intellectual property rights. Such exchange of information should allow trafficking networks to be tracked in order to stop the manufacture and distribution of goods infringing intellectual property rights at an earlier stage of the supply chain. It is therefore necessary to establish the conditions for the exchange of information between customs authorities in the Union and relevant authorities in third countries, including on data protection.
Justification

Due to the international nature of counterfeiting and counterfeitors' expansive networks across borders, it is critical that the customs authorities be able to share and use information, including with third countries, in order to track networks and routes used by counterfeitors.

Amendment 23

Proposal for a regulation
Recital 17 e (new)

Text proposed by the Commission

(17e) In line with the Union's goal of strengthening international cooperation in the fight against counterfeiting, piracy and illicit parallel trade in goods infringing the intellectual property of registered right-holders, the new European Observatory on Counterfeiting and Piracy has a key role to play by providing all customs authorities of Member States with relevant and timely information to conduct appropriate controls of authorised importers and distributors of goods suspected of infringing an intellectual property right in the internal market as well as exporters thereof to foreign markets. This role could be further enhanced by the creation of a database of genuine Union products and services protected by registered trademarks, designs and patents and which could also be made available to foreign customs authorities cooperating with the Union on better intellectual property rights protection and enforcement;

Amendment 24

Proposal for a regulation
Recital 20
Text proposed by the Commission

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Amendment 25
Proposal for a regulation
Recital 20 a (new)

Text proposed by the Commission

(20a) This Regulation introduces the possibility for customs authorities to allow goods abandoned for destruction to be moved, under customs supervision, between different places within the customs territory of the Union. Customs authorities should be encouraged to make use of this provision in order to facilitate the economically and environmentally sound destruction of those goods, as well as for educational and exhibition purposes, while providing for appropriate security measures.
Justification

Goods should also be allowed to be moved for the purpose of education and exhibition purposes. On the one hand, they could be used to train customs officials, particular with regard to new and complex IPR infringements. On the other hand they could serve to teach consumers how they can recognise such goods and to raise the awareness of the risks associated with them.

Amendment 26
Proposal for a regulation
Recital 21 a (new)

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(21a) The following elements of the database should be defined in Union legislation: the entity which will be controlling and managing the database and the entity in charge of ensuring the security of the processing of the data contained in the database. Introducing any type of possible interoperability or exchange should first and foremost comply with the purpose limitation principle, namely that data should be used for the purpose for which the database has been established, and no further exchange or interconnection should be allowed outside this purpose.</td>
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Amendment 27
Proposal for a regulation
Article 1 – paragraph 4 a (new)

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>4a. This Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.</td>
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</table>

Justification
For the sake of clarity, the treatment of goods in transit should be explicitly addressed in the new Regulation. Where there is suspicion of infringement of the rights conferred by the EU's
and Member States' substantive IP law and a concrete risk of diversion of the goods onto the internal market while in transit, customs may legitimately detain the goods.

Amendment 28

Proposal for a regulation
Article 2 – point 1 – point k

Text proposed by the Commission
(k) a utility model *as provided for* by the legislation of a Member State;

Amendment
(k) a utility model *insofar as it is protected as an exclusive intellectual property right* by the legislation of a Member State,

Amendment 29

Proposal for a regulation
Article 2 – 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) 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, *as well as any trade mark sign, even if presented separately, and packaging bearing the trade marks of the counterfeit goods*;

Amendment 30

Proposal for a regulation
Article 2 – 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,

Amendment
7. "goods suspected of infringing an intellectual property right" means goods with regard to which there are sufficient reasons to satisfy customs authorities that,
in the Member State where these goods are found, are prima facie:

*Justification*

*It is not possible to both suspect that goods infringe an intellectual property right and require there to be adequate evidence.*

**Amendment 31**

*Proposal for a regulation*

**Article 2 – point 7 – point a**

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(a) goods which are subject of an action infringing an intellectual property right under the law of the Union or of that Member State;</td>
<td>(a) goods which are subject of an action infringing an intellectual property right <em>in</em> the Member State <em>where the goods are found</em>;</td>
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</table>

**Amendment 32**

*Proposal for a regulation*

**Article 2 – point 7 – point c**

<table>
<thead>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices infringe the right-holder's rights under Union law or the law of that Member State;</td>
<td>(c) any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices infringe the right-holder's rights <em>in</em> the Member State <em>where the goods are found</em>;</td>
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**Amendment 33**

*Proposal for a regulation*

**Article 2 – point 13**

<table>
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<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(13) ‘declarant’ means the declarant as referred to in Article 4(18) of</td>
<td>(13) ‘declarant’ means the <em>person lodging a declaration in his own name or the</em></td>
</tr>
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</table>
Regulation (EEC) No 2913/92; person in whose name a customs declaration is made;

Justification

To ensure legal clarity it is appropriate to define the terms in the proposed Regulation itself rather than providing an external reference to another legislative act.

Amendment 34
Proposal for a regulation
Article 2 – point 15

Text proposed by the Commission

(15) ‘customs supervision’ means the supervision by customs authorities as referred to in Article 4(13) of Regulation (EEC) No 2913/92;

Amendment

(15) ‘customs supervision’ means action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed;

Justification

To ensure legal clarity it is appropriate to define the terms in the proposed Regulation itself rather than providing an external reference to another legislative act.

Amendment 35
Proposal for a regulation
Article 2 – point 17 a (new)

Text proposed by the Commission

(17a) ‘small consignment’ means a single package of commercial nature which:
(a) includes less than three items; or
(b) includes items of a total weight of less than 2 kilograms.

Amendment

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of this Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.
Amendment 36
Proposal for a regulation
Article 2 – point 17 b (new)

Text proposed by the Commission

(17b) 'perishable good' means a good that is liable to significantly reduce in value over time or, because of its nature, is in danger of being destroyed.

Amendment

Amendment 37
Proposal for a regulation
Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of copyrights or related rights;

Amendment

(b) intellectual property collective rights management bodies which are lawfully representing holders of copyrights or related rights;

Amendment 38
Proposal for a regulation
Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights;

Amendment

(c) professional defence bodies which are lawfully representing holders of intellectual property rights;

Amendment 39
Proposal for a regulation
Article 6 – paragraph 1 a (new)

Text proposed by the Commission

1a. The persons referred to in Article 4 shall only submit one application for each intellectual property right protected
in a Member State or in the Union.

Justification

This is to avoid the filing of multiple applications for the same IPR and parallel submissions of national and Union applications, which has led to confusion in the past.

Amendment 40

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Commission shall establish an application form by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 29(2). When exercising its implementing power, the Commission shall consult the European Data Protection Supervisor.</td>
</tr>
</tbody>
</table>

Justification

This amendment follows the recommendations set out in the opinion of the European Data Protection Supervisor (2011/C 363/01).

Amendment 41

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point g

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>g) specific and technical data on the authentic goods, including images where appropriate;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>g) specific and technical data on the authentic goods, including marking, such as bar-coding, and images where appropriate;</td>
</tr>
</tbody>
</table>

Justification

In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.
**Amendment 42**

**Proposal for a regulation**
**Article 6 – paragraph 3 – subparagraph 2 – point i**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) <em>any</em> information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned;</td>
<td>i) information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned, <em>such as the authorised distributors;</em></td>
</tr>
</tbody>
</table>

**Justification**

*It is too much to ask from the right holders to forward and update "any" relevant information, since even the most minor detail can arguably considered relevant. In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.*

**Amendment 43**

**Proposal for a regulation**
**Article 6 – paragraph 3 – subparagraph 2 – point o**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>(o) undertaking by the applicant to agree that the data provided by him/her will be processed by the Commission;</em></td>
<td>deleted</td>
</tr>
</tbody>
</table>

**Justification**

*This extremely sensitive and confidential information is intended for the exclusive use of customs for the purposes of this regulation. This paragraph does not specify for what purposes the Commission would use the data and who else would have access to it. This could raise problems with regard to enforcement and endanger the commercial interests (confidentiality, anti-trust etc.) of right holders.*

**Amendment 44**

**Proposal for a regulation**
**Article 6 – paragraph 3 – subparagraph 2 a (new)**
The application shall contain the information that must be provided to the data subject pursuant to Regulation (EC) No 45/2001 and the national laws implementing Directive 95/46/EC.

Justification

This amendment follows the recommendations set out in the opinion of the European Data Protection Supervisor (2011/C 363/01).

Amendment 45

Proposal for a regulation
Article 6 – paragraph 4

Text proposed by the Commission

4. Where computerised systems are available for the purpose of receiving and processing applications, applications shall be submitted using electronic data-processing techniques.

Amendment

4. Where computerised systems are available for the purpose of receiving and processing applications, applications shall be submitted using electronic data-processing techniques. Member States shall make such systems available no later than 1 January 2014.

Justification

There should be a legal obligation to invest in and implement inter-operable “eCustoms” procedures also regarding enforcement of IPRs.

Amendment 46

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. Where the applicant does not provide the

Amendment

2. Where the applicant does not provide the
missing information within the period referred to in paragraph 1, the competent customs department shall reject the application.

Amendment 47

Proposal for a regulation
Article 14 – paragraph 1 – introductory part

Text proposed by the Commission
The holder of the decision granting the application shall notify the competent customs department that adopted that decision of any of the following:

Amendment
The holder of the decision granting the application shall notify within five working days the competent customs department that adopted that decision of any of the following:

Amendment 48

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission
(b) does not comply with the requirements of Article 18(2) on returning samples;

Amendment
deleted

Justification
The returning of samples cannot always take place and the text is not precise on who judges if the circumstances allow the returning of samples or not. Furthermore one situation cannot prejudge what would be future actions taken by the right holder, the text should provide a sufficiently flexible approach to protect the EU market.

Amendment 49

Proposal for a regulation
Article 15 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission
(d) does not initiate proceedings as

Amendment
(d) does not initiate proceedings as
provided for in Articles 20(1), 23(4) or 24(9).

provided for in Article 20(4) or Article 24(9).

Amendment 50
Proposal for a regulation
Article 16 – paragraph 1

Text proposed by the Commission

1. Where the customs authorities of a Member State identify, in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right covered by a decision granting an application for action, they shall take a decision to suspend the release of the goods or to detain them.

Amendment

1. Where the customs authorities of a Member State identify, in one of the situations referred to in Article 1(1), goods suspected of infringing an intellectual property right covered by a decision granting an application for action, they shall suspend the release of the goods or detain them.

Justification

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

Amendment 51
Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and images of those items as appropriate.

Amendment

2. Before suspending the release or detaining the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities shall also provide the holder of the decision, at his/her request, with information about the actual or supposed number of items, their nature and photographs of those items as appropriate.

Justification

The suspension of the release or detention of goods pending the decision from the right-
holder is not a decision point. Therefore, it is proposed to delete the word "decision". It should be an obligation for customs authorities to provide the right-holder at his/her request with information about the items. This will help the right-holder to identify infringements and take further action against the infringer.

**Amendment 52**

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 *dispatch* of that communication.

**Amendment**

3. *Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods*, 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 three working days of *receipt* of that communication.

**Amendment 53**

Proposal for a regulation
Article 16 – paragraph 3 a (new)

**Text proposed by the Commission**

3a. *Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a suspensive procedure*, the customs authorities shall request the declarant or holder of the goods to provide adequate evidence that the final destination of the goods is beyond the territory of the Union within three working days of receipt of that request. *Where no adequate evidence to the contrary is provided*, customs...
authorities shall presume the final destination to be the territory of the Union.

By ..., the Commission shall adopt guidelines for customs authorities to assess the risk of deviation of the goods referred to in the first subparagraph onto the market of the Union in accordance with the advisory procedure referred to in Article 29(2).

* OJ: please insert the date: 12 months from the date of entry into force of this Regulation.

### Amendment 54

**Proposal for a regulation**  
**Article 16 – paragraph 4 – subparagraph 1**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The customs authorities shall notify the holder of the decision granting the application and the declarant or holder of the goods of <em>their decision to suspend</em> the release of the goods or <em>to detain them</em> within one working day of the <em>adoption</em> of their decision.</td>
<td>The customs authorities shall notify the holder of the decision granting the application and the declarant or holder of the goods of the <em>suspension of the release</em> of the goods or <em>their detention</em> within one working day. <em>Alternatively, the customs authorities may request the holder of the decision granting the application to notify the declarant or holder of the goods accordingly, where the holder of the decision granting the application guarantees that he/she will comply with the time limits and obligations laid down in this Regulation.</em></td>
</tr>
</tbody>
</table>

### Amendment 55

**Proposal for a regulation**  
**Article 16 – paragraph 4 – subparagraph 2**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The notification to the declarant or holder of the goods shall include information on the legal consequences provided by Article</td>
<td>The notification to the declarant or holder of the goods shall include information on the legal consequences provided by Article</td>
</tr>
</tbody>
</table>
with respect to other goods than counterfeit and pirated goods and by Article 23 with respect to counterfeit and pirated goods.

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 56
Proposal for a regulation
Article 16 – paragraph 5

Text proposed by the Commission
5. The customs authorities shall inform the holder of the decision granting the application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including images of those items as appropriate, whose release has been suspended or which have been detained.

Amendment
5. The customs authorities shall inform the holder of the decision granting the application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including photographs of those items as appropriate, whose release has been suspended or which have been detained.

Amendment 57
Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission
2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and images of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of

Amendment
2. Before suspending the release of or detaining the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and photographs of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights
intellectual property rights to provide them with any relevant information.

**Justification**

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

**Amendment 58**
Proposal for a regulation
Article 17 – paragraph 3

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to 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 dispatch of that communication.</td>
<td>deleted</td>
</tr>
</tbody>
</table>

**Justification**

This additional obligation would create a disproportionate administrative burden for customs authorities, potentially resulting in a reduction of possible seizures. Economic operators who import goods into the EU are very well aware that their consignments may be subject to customs controls, which may entail the suspension of their release. This does not infringe the rights of the importer, since the customs authority only makes use of its legally enshrined rights and obligations.

**Amendment 59**
Proposal for a regulation
Article 17 – paragraph 3 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3a. Where goods suspected to be an imitation or a copy of a product protected in the Union by an intellectual property right are placed under a suspensive procedure, the customs</td>
<td></td>
</tr>
</tbody>
</table>
authorities shall request the declarant or holder of the goods to provide adequate evidence that the final destination of the goods is beyond the territory of the Union within three working days of dispatch of that request. Where no adequate evidence to the contrary is provided, customs authorities shall presume the final destination to be the territory of the Union.

By ...* the Commission shall adopt guidelines for customs authorities to assess the risk of deviation of the goods referred to in the first subparagraph onto the market of the Union in accordance with the advisory procedure referred to in Article 29(2).

* OJ: please insert the date: 12 months from the date of entry into force of this Regulation.

Justification

Since it is highly uncertain that substantive legislation will be amended to cover the mere transit of goods that are imitations or copies of goods protected in the EU, it is proposed to include this additional safeguard to prevent those goods from entering the internal market. Two conditions must be fulfilled so that customs can suspend the release of or detain goods: goods must be suspected to be counterfeit or pirated and the evidence provided must be inadequate.

Amendment 60

Proposal for a regulation
Article 17 – paragraph 4 a (new)

Text proposed by the Commission

4a. Where no person entitled to submit an application can be identified, customs authorities shall cooperate with the competent authorities in order to identify a person entitled to submit an application.

Justification

This amendment seeks to improve the cooperation between customs authorities and competent
authorities in order to identify the person entitled to submit an application. This would solve the current problem that customs must grant the release of the goods suspected to infringe IPR or put an end to their detention if they are not able to identify the person entitled to submit an application within one working day.

Amendment 61

Proposal for a regulation
Article 17 – paragraph 5 – subparagraph 2

*Text proposed by the Commission*

The customs authorities shall notify the declarant or holder of the goods of **their decision to suspend** the release of the goods or **to detain them** within one working day of the adoption of their decision.

*Amendment*

The customs authorities shall notify the declarant or holder of the goods of the suspension of the release of the goods or their detention within one working day.

*Justification*

The suspension of the release or detention of goods pending the decision from the right-holder is not a decision point. Therefore, it is proposed to delete the word "decision".

Amendment 62

Proposal for a regulation
Article 17 – paragraph 6

*Text proposed by the Commission*

6. This Article shall not apply to perishable goods.

*Amendment*

deleted

Amendment 63

Proposal for a regulation
Article 18 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

The customs authorities may take samples and may provide samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of

*Amendment*

The customs authorities may take samples representative of the goods as a whole and may provide or send such samples to the holder of the decision granting the
analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Justification

In order to effectively fight against counterfeiting, it is necessary to encourage an effective and inexpensive interaction between the customs and the holders of the decision granting the application.

Amendment 64

Proposal for a regulation
Article 18 – paragraph 3

Text proposed by the Commission

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

Amendment

3. The customs authorities shall, upon request and if known, provide the holder of the decision granting the application and, where relevant, law enforcement authorities and agencies with the names and addresses of the consignee, the consignor, the declarant or the holder of the goods, the customs procedure and the origin, provenance and destination of goods suspected of infringing an intellectual property right.

Amendment 65

Proposal for a regulation
Article 19 – point a

Text proposed by the Commission

(a) to initiate proceedings to determine whether an intellectual property right has been infringed;

Amendment

(a) to initiate proceedings to determine whether an intellectual property right has been infringed or in the course of such proceedings;


Amendment 66  
Proposal for a regulation  
Article 19 – point a a (new)

Text proposed by the Commission  

Amendment

(aa) to take further action in order to identify the infringer of the intellectual property right;

Justification

Right-holders should be entitled to use the information in order to take further action to determine the infringer, e.g. starting investigations and forwarding information to enforcement authorities, including in third countries.

Amendment 67  
Proposal for a regulation  
Article 19 – point a b (new)

Text proposed by the Commission  

Amendment

(ab) to initiate criminal proceedings or in the course of such proceedings;

Justification

Right holders should be entitled to use the information in order to initiate criminal proceedings against infringers or in the course of such proceedings.

Amendment 68

Proposal for a regulation  
Article 19 – point b

Text proposed by the Commission  

Amendment

(b) to seek compensation from the infringer or other persons where goods are destroyed in accordance with Articles 20(3) or 23(3).

(b) to seek compensation from the infringer or other persons where goods are destroyed in accordance with Article 20(3).

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents).
Therefore it is proposed to delete the paragraphs of the proposed Article 20 and replace them with the wording on proposed Article 23, which would then apply to all IPR infringements.

Amendment 69
Proposal for a regulation
Article 19 – point b a (new)

Text proposed by the Commission

(\textit{ba}) to use the information for or in connection with a criminal investigation or criminal proceeding, including those related to an intellectual property right.

Amendment 70
Proposal for a regulation
Article 19 – point b b (new)

Text proposed by the Commission

(\textit{bb}) to use the information in settlement negotiations out of court.

Amendment 71
Proposal for a regulation
Article 19 a (new)

Text proposed by the Commission

\textit{Article 19a}

\textit{Sharing of information and data between customs authorities}

Subject to appropriate data protection safeguards, the Commission may decide that information and data collected under Article 18(3) is to be shared between customs authorities in the Union and relevant authorities in third countries and establish the conditions of such sharing.
Cooperation with third countries is essential for countering the proliferation of trade in IPR infringing goods. In order for this cooperation to be effective, EU customs authorities should be able to share information and data on IPR violations with their counterparts in third countries, under confidentiality, and provided stringent data protection safeguards are in place.

Amendment 72
Proposal for a regulation
Section 2 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiation of proceedings and anticipated release of goods</td>
<td>Destruction of goods, initiation of proceedings and anticipated release of goods</td>
</tr>
</tbody>
</table>

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 73
Proposal for a regulation
Article 20 – title

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiation of proceedings</td>
<td>Destruction of goods and initiation of proceedings</td>
</tr>
</tbody>
</table>

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 74
Proposal for a regulation
Article 20 – paragraph 1
Text proposed by the Commission

1. Where goods other than those covered by Articles 23 and 24 are suspected of infringing an intellectual property right, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment

1. Goods the release of which has been suspended or which have been detained in accordance with Article 16 may be destroyed under customs control, without there being any need to determine whether an intellectual property right has been infringed under the law of the Member State where the goods are found, where all of the following conditions are fulfilled:

(a) the holder of the decision granting the application has, based on the information provided to him/her in accordance with Article 16(2), confirmed in writing to the customs authorities that an intellectual property right has been infringed, indicating which intellectual right has been infringed, within 10 working days, or within three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention;

(b) the holder of the decision granting the application has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or within three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention;

(c) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods within 10 working days, or within three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention.

Justification
Amended Article 23(1): In addition to confirming his/her agreement to destruction, the right-
holder should also confirm that an IPR has been infringed and indicate which IPR is concerned, based on the information he/she has received from the customs authorities. Only then, and provided the agreement of the declarant/holder of the goods, may be abandoned for destruction. In order to avoid problems linked to the sending of the notification, the deadline should be set with reference to the receipt of the notification, and not its dispatch.

Amendment 75
Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission

2. The customs authorities shall grant the release of the goods or put an end to their detention immediately after completion of all customs formalities where they have not been informed by the holder of the decision granting the application, within the period referred to in paragraph 1, of any of the following:

(a) the initiation of proceedings to determine whether an intellectual property right has been infringed;
(b) a written agreement between the holder of the decision granting the application and the holder of the goods to abandon the goods for destruction.

Amendment

2. Where the declarant or holder of the goods within the periods set out in point (c) of paragraph 1 has not confirmed his/her agreement to destruction nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities shall deem that the declarant or holder of the goods has agreed to their destruction.

Justification

Amended Article 23(2): For reasons of legal clarity the syntax position of the reference to the period in paragraph (1)(c) is modified to apply to both agreement to destruction and opposition to destruction. Moreover, it should be ensured that the concept of implied consent is applied if the declarant or holder of the goods fails to notify his opposition to destruction by replacing "may" with "shall", as it is already practice in some Member States.
3. **In the case of an agreement to abandon the goods for destruction referred to in paragraph 2(b),** the destruction shall be carried out under customs control at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. 

**Justification**

The original text of Article 23(3) is moved to Article 20, because Article 23 in its amended form should apply to all IPR infringements.

**Amendment 77**

**Proposal for a regulation**

**Article 20 – paragraph 4**

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. **Samples may be taken prior to destruction.**

4. **Where there is no agreement to destruction or the declarant or the holder of the goods objects to destruction,** the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 20 working days, or three working days in the case of perishable goods, of the receipt of the notification of the suspension of the release of the goods or their detention.

**Justification**

Amended wording of Article 23(4): Right-holders should be allowed to wait for the declarant or holder of the goods to oppose to the destruction within the period indicated in paragraph 1(c) before deciding to initiate proceedings. This requires an extension of the period beyond 10 working days.
Amendment 78
Proposal for a regulation
Article 20 – paragraph 4 a (new)

Text proposed by the Commission

4a. The customs authorities shall grant the release of the goods or put an end to their detention, as appropriate, immediately after completion of all customs formalities, where they have not received information from the holder of the decision granting the application on any of the following:

(a) his/her agreement to the destruction within the periods referred to in point (b) of paragraph 1;

(b) the initiation of proceedings to determine whether an intellectual property right has been infringed within the period referred to in paragraph 4.

Justification

The original text of Article 23(5) is moved to Article 20, because Article 23 in its amended form should apply to all IPR infringements.

Amendment 79
Proposal for a regulation
Article 22 – paragraph 1 – introductory part

Text proposed by the Commission

1. Goods abandoned for destruction under Articles 20, 23 or 24 shall not be:

Amendment

1. Goods abandoned for destruction under Articles 20 or 24 shall not be:

Amendment 80
Proposal for a regulation
Article 22 – paragraph 1 a (new)

Text proposed by the Commission

1a. By way of exception to the provisions of paragraph 1, the customs authorities
may authorise the public or private organisations, which aim at combating against counterfeiting and have been individually authorised prior to these operations, to use the above-mentioned measures. Prior to the destruction of the abandoned goods, the authorised organisations may stock them, in the conditions defined in the authorisation, for the purposes of analysis and establishment of a database of information intended to fight against counterfeiting. The authorised organisations shall be published on the website of the Commission.

Justification

Study of the counterfeit or pirated goods provides information on the understanding of the problem and allows introducing the relevant strategies for combating it. It is then necessary to be able to analyse these goods prior to their destruction.

Amendment 81
Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission

2. The customs authorities may allow the goods referred to in paragraph 1 to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control.

Amendment

2. The customs authorities may allow the goods referred to in paragraph 1 to be moved under customs supervision between different places within the customs territory of the Union with a view to their destruction under customs control or their use for education and exhibition purposes accompanied by appropriate security measures.

Justification

Goods should also be allowed to be moved for the purpose of education and exhibition purposes. On the one hand, they could be used to train customs officials, in particular with regard to new and complex IPR infringements. On the other hand they could serve to teach consumers how they can recognise such goods and to raise the awareness of the risks associated with them.
Amendment 82
Proposal for a regulation
Section 3 – title

Text proposed by the Commission

Amendment

Section 3 deleted

Counterfeit and pirated goods

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 83
Proposal for a regulation
Article 23

Text proposed by the Commission

Amendment

Article 23 deleted

Destruction and initiation of proceedings

1. Goods suspected of being counterfeit goods or pirated goods may be destroyed under customs control, without there being any need to determine whether an intellectual property right has been infringed under the law of the Member State where the goods are found, where all of the following conditions are fulfilled:

(a) the holder of the decision granting the application has informed the customs authorities in writing of his/her agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them;

(b) the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the
destruction of the goods within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.

2. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities may deem that the declarant or holder of the goods has agreed to their destruction.

The customs authorities shall inform the holder of the decision granting the application accordingly.

Where the declarant or holder of the goods objects to the destruction of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection.

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples may be taken prior to destruction.

4. Where there is no agreement to destruction, the holder of the decision granting the application shall initiate proceedings to determine whether an intellectual property right has been infringed within 10 working days, or three working days in the case of perishable goods, of dispatch of the decision to suspend the release of the goods or to detain them.

The customs authorities may extend the periods referred to in the first subparagraph by a maximum of 10
working days upon request by the holder of the decision granting the application in appropriate cases.

In the case of perishable goods those periods shall not be extended.

5. The customs authorities shall grant the release of the goods or put an end to their detention, as appropriate, immediately after completion of all customs formalities, where they have not received information from the holder of the decision granting the application on any of the following:

(a) his/her agreement to the destruction within the periods referred to in paragraph 1(a);

(b) the initiation of proceedings to determine whether an intellectual property right has been infringed within the period referred to in paragraph 4.

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods also infringe both trademark/copyright and other intellectual property rights (e.g. patents). Therefore it is proposed to replace the paragraphs of Article 20 with the adapted wording of Article 23, which would then apply to all IPR infringements.

Amendment 84
Proposal for a regulation
Article 24 – paragraph 1 – point a

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) goods suspected of being counterfeit or pirated goods;</td>
<td>(a) goods suspected of infringing an intellectual property right;</td>
</tr>
</tbody>
</table>

Justification

The specific procedure for small consignments should apply to all IPR infringements in order to simplify its application and to improve the effectiveness of IPR protection.
Amendment 85
Proposal for a regulation
Article 24 – paragraph 1 – point c a (new)

Text proposed by the Commission

(ca) the holder of the decision granting the application has requested the use of the specific procedure in his application;

Justification

An "opt-in" by the right-holder should be required in order to apply this specific procedure to infringements covered by his/her application, because he/she will also have to pre-finance the costs of storage and destruction.

Amendment 86
Proposal for a regulation
Article 24 – paragraph 2

Text proposed by the Commission

2. Article 16 (3), (4) and (5) and Article 18(2) shall not apply.

Amendment

2. Article 16(4) and (5) and Article 18(2) shall not apply.

Amendment 87
Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within five working days of receipt of the decision to suspend the release of the goods or to detain them.

Justification

Granting the declarant or holder of the goods a period of 20 working days to confirm his/her agreement to the destruction of the goods seems unjustified and disproportionate. This would unnecessarily slow down procedures and increase storage costs.
Amendment 88
Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

5. The goods concerned may be destroyed where, within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Amendment

5. The goods concerned may be destroyed where the declarant or holder of the goods has confirmed in writing to the customs authorities his/her agreement to the destruction of the goods. Such destruction shall be carried out under customs control at the expense of the holder of the decision granting the application.

Justification

There is no need to limit the period in which the declarant/holder of the goods can confirm his agreement to destruction. This way, the procedure can be applied more flexibly, e.g. if the customs authorities receive the agreement one day later or after the right-holder has contacted the holder of the goods/declarant. Further, the method of confirmation should be aligned with the method specified in Amendment 34 to Article 21. Finally, Article 24(7) in its amended form is included in this paragraph.

Amendment 89
Proposal for a regulation
Article 24 – paragraph 7

Text proposed by the Commission

7. The destruction shall be carried out under customs control and at the expense of the customs authorities.

Amendment

deleted

Amendment 90
Proposal for a regulation
Article 24 – paragraph 7 a (new)

Text proposed by the Commission

7a. The customs authorities shall provide the holder of the decision granting the application with access to information about the actual or presumed number of destroyed items and their nature where
Right holders should obtain access to information about the goods destroyed under this procedure, which they can use for their investigations. An efficient way of organising this without creating a disproportionate burden for customs authorities could be an electronic database in which all goods covered by a decision granting an application are registered. Right holders of a decision granting the application would get access to information only on these goods.

**Amendment 91**

**Proposal for a regulation**

**Article 24 – paragraph 8**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Where the declarant or holder of the goods <em>objects to the destruction</em> of the goods, the customs authorities shall inform the holder of the decision granting the application of such objection and of the number of items and their nature, including images of those items where appropriate.</td>
<td>8. Where the declarant or holder of the goods <em>within 10 working days of receipt of the decision to suspend the release</em> of the goods or to detain them has not confirmed his/her agreement to destruction or notified his/her opposition to destruction, the customs authorities shall inform the holder of the decision granting the application of such <em>missing agreement or objection</em> and of the number of items and their nature, including images of those items or samples where appropriate.</td>
</tr>
</tbody>
</table>

**Amendment 92**

**Proposal for a regulation**

**Article 24 – paragraph 10**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
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<tbody>
<tr>
<td>10. <em>The Commission shall be empowered to adopt delegated acts in accordance with Article 30 concerning the thresholds that define small consignments for the purpose of this Article.</em></td>
<td>deleted</td>
</tr>
</tbody>
</table>

*Justification*

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators...
should be entitled to decide on the definition and the applicable thresholds.

Amendment 93

Proposal for a regulation

Article 27 – paragraph 1

Text proposed by the Commission

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 23.

Amendment

1. Where requested by the customs authorities, the holder of the decision granting the application shall reimburse all costs incurred by the customs administration in keeping goods under customs supervision in accordance with Articles 16 and 17 and in destroying goods in accordance with Articles 20 and 24. The holder of a decision shall, upon request, be given information by the customs authorities on where and how the detained goods are being stored and on the costs associated with such storage, and shall be given the opportunity to comment on that storage.

Justification

The simplified procedure only for counterfeit and pirated goods would create legal uncertainty, since it is not clear which procedure should be applied when goods also infringe other IPRs. Right-holders should also reimburse the costs in the specific procedure for small consignments. Moreover the requirement for the right holder to make an economic calculation when submitting an application for action can be problematic for SMEs and may in turn lead to the right holder choosing not to submit an application, thus letting infringing goods cross the border.”

Amendment 94

Proposal for a regulation

Article 27 – paragraph 2 a (new)

Text proposed by the Commission

2a. Where the infringer cannot be identified, is not tangible or unable to provide compensation, the holder of the
decision granting the application may seek compensation from the owner of the goods or the person who has a similar right of disposal over them.

Justification

The right-holders should be entitled to first seek compensation from the consignees, because they are directly involved in the commercial transaction.

Amendment 95
Proposal for a regulation
Article 27 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Paragraph 2a shall not apply to the procedure set out in Article 24.

Justification

In the case of small consignments, where the consignees are often consumers acting in good faith, Article 2a (new) should not apply.

Amendment 96
Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

Amendment

The Member States shall lay down the rules on administrative sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive. 

Without prejudice to national law, the Member States shall apply the rules on administrative sanctions relating to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.

Amendment 97
Proposal for a regulation
Chapter 5 – title
Text proposed by the Commission

Amendment

COMMITTEE, DELEGATION AND FINAL PROVISIONS

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 98
Proposal for a regulation
Article 30

Text proposed by the Commission

Amendment

Article 30 deleted

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 24(10) shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of powers referred to in Article 24(10) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to
Article 24(10) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months on the initiative of the European Parliament or the Council.

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are essential elements of the proposed Regulation. Therefore the co-legislators should be entitled to decide on the definition and the applicable thresholds.

Amendment 99

Proposal for a regulation

Article 31 – paragraph 1

Text proposed by the Commission

1. The competent customs departments shall notify the Commission of the following:

a) applications for action, including any photograph(s), image(s), brochure(s);

b) decisions granting applications;

c) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;

d) any suspension of a decision granting the application.

Amendment

1. The competent customs departments shall notify the Commission of the necessary information relating to the following:

a) decisions granting applications, including applications for action and any photograph(s), image(s), brochure(s);

b) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;

c) any suspension of a decision granting the application.
Amendment 100

Proposal for a regulation
Article 31 – paragraph 3

*Text proposed by the Commission*

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission.

*Amendment*

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission. *Once the central database of the Commission is in place, the transmission of the information referred to in paragraphs 1 and 2 shall be made via that database.*

Amendment 101

Proposal for a regulation
Article 31 – paragraph 4

*Text proposed by the Commission*

4. The Commission shall make the relevant information referred to in paragraphs 1 and 2 available to the customs authorities of the Member States in an electronic form.

*Amendment*

4. The Commission shall make the relevant information referred to in paragraphs 1 and 2 available to the customs authorities of the Member States in an electronic form as soon as possible and not later than 1 January 2015.

4a. For the purposes of ensuring processing of the information referred to in paragraphs 1 to 4, the central database referred to in paragraph 3 shall be established in an electronic form. The central database shall contain the information, including personal data, referred to in Article 6(3), Article 13 and Article 31.

4b. The customs authorities of the Member States and the Commission shall have access to the information contained in the central database.

4c. The customs authority shall introduce into the central database information related to the applications submitted to the
competent customs department. The customs authority which has introduced information into the central database shall, where necessary, amend, supplement, correct or delete such information. Each customs authority that has introduced information in the central database shall be responsible for the accuracy, adequacy and relevancy of that information.

4d. The Commission shall establish and maintain adequate technical and organisational arrangements for the reliable and secure operation of the central database. The customs authority of each Member State shall establish and maintain adequate technical and organisational arrangements to ensure the confidentiality and security of processing with respect to the processing operations carried out by their customs authorities and with respect to terminals of the central database located on the territory of that Member State.

4e. The processing of personal data in the central database shall be carried out in compliance with Article 32.

Amendment 102

Proposal for a regulation

Article 32 – paragraph 1

_Text proposed by the Commission_

1. The processing of personal data in the central database of the Commission shall be carried out in accordance with Regulation (EC) No 45/2001\(^\text{26}\) and under the supervision of the European Data Protection Supervisor.

_Amendment_

1. The processing of personal data in the central database of the Commission shall be carried out in accordance with Regulation (EC) No 45/2001\(^\text{26}\) and under the supervision of the European Data Protection Supervisor. _In any event, the implementing measures to be adopted should specify in detail the functional and technical characteristics of the database._
Amendment 103

Proposal for a regulation
Article 32 – paragraphs 2 a-f (new)

Text proposed by the Commission

2a. Personal data shall be collected and used solely for the purposes of this Regulation. Personal data so collected shall be accurate and shall be kept up to date.

2b. Each customs authority that has introduced personal data into the central database shall be the controller with respect to the processing of those data.

2c. A data subject shall have a right of access to the personal data relating to him or her that are processed through the central database and, where appropriate, the right to the rectification, erasure or blocking of personal data in accordance with Regulation (EC) 45/2001 or the national laws implementing Directive 95/46/EC.

2d. All requests for the exercise of the right of access, rectification, erasure or blocking shall be submitted to and processed by the competent customs department. Where a data subject has submitted a request for the exercise of the right of access, rectification, erasure or blocking to another office of customs authorities or to an office of the Commission, the office which received the request shall forward such request to the competent customs department.

2e. Personal data shall not be kept longer than six months from the date the relevant decision granting the application has been revoked or the relevant period during which the customs authorities are to take action has expired.

2f. Where the holder of the decision granting the application has initiated proceedings in accordance with Article
20(1) or Article 24(9) of this Regulation and has notified the competent customs department of the initiation of such proceedings, personal data shall be kept for six months after proceedings have determined in a final way whether an intellectual property right has been infringed.

Amendment 104
Proposal for a regulation
Article 37 – title

Text proposed by the Commission

Entry into force and application

Amendment

Entry into force and reporting

Amendment 105
Proposal for a regulation
Article 37 – paragraph 1 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. If necessary, the 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.

Justification

The report will provide useful information on the functioning of this Regulation, in particular the enforcement of additional IPR by customs authorities and the special procedure for small consignments.

Amendment 106
Proposal for a regulation
Article 37 – paragraph 2
Text proposed by the Commission

Amendment

However, Article 24(1) to (9) shall apply deleted
from XX.XX.20XX.

Justification

The definition of 'small consignment' and in particular the thresholds that define small consignments are established in this Regulation, therefore it is not necessary to provide for a deterred application of Article 24(1) to (9).
EXPLANATORY STATEMENT

Background

Intellectual Property Rights (IPR) are fundamental to innovation, which is a key priority of the Europe 2020 strategy for smart, sustainable and inclusive growth. Given the increase of IPR infringements and international trade in infringing goods, large parts of economic growth and jobs in the EU depend on the effective enforcement of IPR. It is estimated that piracy and counterfeiting cost European businesses EUR 250 billion each year.

In addition to the negative implications for businesses, violations of these rights can also pose a serious threat to the health and safety of consumers. In 2010, 14.5% of the total amount of detained articles were products for daily use and products that would be potentially dangerous to the health and safety for consumers (i.e. foods and beverages, body care articles, medicines, electrical household goods and toys).

The customs authorities are in a comparatively good position to enforce IPRs effectively at the EU’s external borders, before the goods enter the internal market. Once the goods spread across different Member States, it becomes much more difficult and costly to trace them and to initiate proceedings.

The importance of improved customs enforcement of IPR is underlined by the fact that, between 2009 and 2010, the number of registered cases of counterfeiting and piracy almost doubled. In 2010, customs registered 79,112 cases, as compared to 43,572 in 2009. Online sales in particular caused a spectacular increase of detentions in postal traffic by 200%, where most cases concerned clothing, shoes and electrical goods and 69% of the goods detained were medicines.

As part of its IPR strategy, the European Commission proposed to revise Regulation (EC) 1383/2003 in order to strengthen the enforcement of IPR by customs authorities as well as to improve legal clarity, adapting the provisions of the Regulation to new developments. The revision of the Regulation was also included in the Customs Action Plan 2009-2012, which was endorsed by the Council, and the Single Market Act.

Recommendations

The rapporteur welcomes the revision of the Regulation, but would like to submit the following recommendations:

Scope

It is important to underline that the proposed Regulation should only lay down the procedures
enabling the customs authorities to prevent the movement of goods which they suspect of infringing IPR. By contrast, the determination of IPR infringements itself will be exclusively based on the EU’s substantive IP legislation or the national laws of the Member States. This means that many significant problems related to the enforcement of IPR cannot be addressed by the proposed Regulation, but only by revision of substantive legislation, such as the Trade Mark Directive and the Community Trademark Regulation.

However the Commission does not follow this approach consistently when it proposes to maintain the exclusion of travellers' luggage for private use. The question of whether importing of fake goods by end-users qualifies as an action infringing an IPR is already addressed by substantive law. Therefore the current exemption is merely of declaratory character, but it sends the wrong message to customs authorities, consumers and commercial enterprises that importing infringing goods for personal use is acceptable.

The rapporteur is of the opinion that the substantive IP law should recognise the principle that fake goods also constitute infringements of IPR when they are for private use and encourages the Commission to address this problem by revising the respective legislation.

The rapporteur welcomes the extension of the scope to all types of IPR infringements contemplated by the EU's and Member States' substantive legislation, including parallel trade and overruns. Parallel imports are illegal according to the substantive legislation of various Member States and customs authorities should be enabled to enforce the provisions of substantive IP law. Often mixed with fake goods and lacking quality control, parallel imports deceive consumers and can endanger their health and safety.

**Suspension of the release or detention of goods suspected of infringing an IPR**

Where the customs authorities of a Member State identify goods suspected of infringing an IPR covered by a decision granting an application for action, before adopting the decision of suspension of release or detention of the goods, they should be obliged to provide the right-holder at his/her request with information about the items. This would help the right-holder to identify infringements and take further action against the infringer.

The additional obligation for customs authorities allowing for a right to be heard before an adverse decision is taken would create a disproportionate administrative burden for customs authorities, potentially resulting in a decreased level of IPR protection. Besides, economic operators who import goods into the EU are aware that their consignments may be subject to customs controls. These do not infringe the rights of the importer, since the customs authority merely makes use of its legally enshrined rights and obligations. However, this should not preclude the right to be heard in the special procedure for small consignments, where consumers are likely to be directly concerned.

**Initiation of proceedings**

The rapporteur welcomes the proposal from the Commission to make the implementation of the simplified procedure mandatory in all Member States. However, the rapporteur believes
that the simplified procedure should be applicable not only to counterfeit and pirated goods, but for all IPR infringements. The simplified procedure only for counterfeit and pirated goods would create legal uncertainty in practice, since it is not clear which procedure should be applied when goods infringe both trademark rights/copyrights and other IPRs (e.g. patents).

**Small consignments**

The rapporteur welcomes the proposal to have a specific, simplified procedure for small consignments, but suggests various modifications:

The definition of the term "small consignment" constitutes an essential element of the proposed Regulation and should therefore be defined therein. The rapporteur proposes a definition based on the number of items (less than three) and their total weight (less than 2kg) contained in a single package. These criteria and thresholds are based on various replies from stakeholders to the public consultation. The rapporteur decided not to include the value of the items, since there is no agreement as to which value should be applied (value of the suspect goods or of the genuine goods?) and there are no objective criteria for customs authorities to determine the value of fake goods.

The procedure should be applicable to all IPR infringements, consistent with the approach taken for the other goods.

The destruction of goods by customs without confirmation of an IPR infringement from the right-holder or a court would constitute an unacceptable interference with the fundamental right of property. Therefore, right-holders should have to "opt-in", i.e. they should request the use of the small consignments procedure in their application for customs intervention. With this request, the right-holders would accept that they would pre-finance the costs of storage and destruction.

The declarant/holder of the goods, who is likely to be a consumer, should be granted a right to be heard. However the period should be shortened in order not to unnecessarily slow down procedures and increase storage costs.

Finally, right-holders should obtain access to information about the goods destroyed under this procedure, which they can use for their investigations. An efficient way of organising this could be an electronic database in which all goods covered by a decision granting an application are registered. The "Interface Public Members" (IPM) developed by the World Customs Organisation could serve as a model for such a system.

**Costs**

The rapporteur welcomes the clarification in the proposal that the right-holder, whilst having to pre-finance all costs for storage and destruction, shall be entitled to seek compensation from the infringer or other persons.

However, the rapporteur would like to clarify some of the conditions under which persons
other than the infringer who are involved in the commercial transaction may be held liable. This would help the right-holders in seeking reimbursement for their expenses where the infringers have concealed their identity, are not tangible (e.g. because they are located in a third country) or unable to pay.

In such a case, the right-holders should be entitled to first seek compensation from the consignees, because they are directly involved in the commercial transaction.

If the consignee cannot be identified either, is not tangible or unable to pay, the right-holder should be able to seek compensation from intermediaries such as carriers or freight forwarders (physical holders of the goods), where they have failed to exercise due diligence in the handling of the consignment. The criteria to establish such failure should be specified in the proposed Regulation.

**Goods in transit**

The rapporteur welcomes the clarifications proposed with regard to the treatment of goods from third countries suspected to infringe an IPR protected in the EU that are placed in an external transit procedure, which will help to solve the WTO dispute against the EU and facilitate the access to medicines in developing countries.

The proposal maintains the ability of customs authorities to check goods, in order to enforce IPRs, wherever the goods are under their supervision in the customs territory of the EU. However, it is important to note that, according the EU’s substantive IP legislation, such goods can only be classified as infringing IPR protected in the EU if it can be established that they are for sale in the EU.

The ECJ has recently specified under which the conditions the customs authorities can suspect that goods declared as transit are in fact intended for sale in the EU (Joint Cases C-446/09 and C-495/09). These specifications should be included in the proposed Regulation for the sake of legal certainty.

The principle of freedom of transit was never intended to apply to illicit trade, including goods which infringe IPRs. Therefore the rapporteur encourages the Commission to ensure in future revisions of substantive IP law that goods placed under suspensive procedures that are imitations or copies of goods protected in the EU by IPRs can always be classified as counterfeit and pirated goods.
30.1.2012

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE (*)

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights
(COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

Rapporteur (*): Josefa Andrés Barea

(*) Associated committee - Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

In a globalised economy, intellectual property has become a major factor of European competitiveness. Protecting knowledge is about protecting Europe's investment in research, innovation and jobs. At the same time, intellectual property right (IPR) infringements and the resulting global trade in counterfeit goods is an ever growing concern, both in terms of the economic consequences for Europe's industry as well as the risks to its consumers' health and safety.

Statistics¹ of customs detentions recorded at EU external borders show a clear increase in the number of shipments suspected of violating IPR. While lack of reliable data hampers assessing the full scale of the problem, statistics on EU customs actions signal a striking upward trend in particular in seizures of small postal or courier packages resulting from online purchases. In 2010, almost 69% of the articles detained in postal traffic were medicines.

At EU borders, customs authorities are both in the frontline and in a privileged position to take action against counterfeiting and the illegal entry of goods into the EU, and thereby to ensure the competitiveness of the European trade environment. As customs rules and practices play a vital role for effective action, the Commission proposal to revise the existing border enforcement Regulation 1383/2003, with the aim of enhancing IPR enforcement while streamlining customs procedures, is welcome.

¹ http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/

R\898122EN.doc 65/95 PE470.069v03-00
This proposal forms part of the wider knowledge-based strategy outlined in the Europe 2020 Communication as well as the EU Customs Action Plan to combat IPR infringements for 2009-2012.

**Your rapporteur's proposals**

As customs formalities have direct implications on international trade, it is of utmost importance that enforcement measures do not themselves become a barrier to legitimate trade. Apart from the overall objectives of trade facilitation, the provision of safeguards against abuse as well as increased legal certainty, these measures must be in line with the EU's international commitments.

These are some of the concerns that underlie my proposals as rapporteur for the Committee on International Trade. There are three aspects of particular interest from the external trade point of view that I wish to highlight in this opinion: goods in transit, parallel trade, and international cooperation.

**Goods in transit**

Transit related issues merit a specific attention. Recital 17 of the new draft Regulation to replace Regulation 1383/2003 refers to a very particular case: imports of generic medicines. This reference is a result of well-known concerns related to instances of detentions of in-transit medicines, on the basis of alleged patent infringements, and the ensuing disputes in the World Trade Organisation (WTO) against the EU by India and Brazil.

Recital 17 is a welcome reinstatement of the EU's commitment towards facilitating access to medicines in the developing world as well as its obligation, under WTO rules, to guarantee freedom of transit. It thereby introduces further clarity and legal certainty for legitimate stakeholders on the customs treatment of 'in particular' medicines that are merely transiting the EU and not destined for, nor pose a risk of being diverted onto, the EU internal market.

Under the current proposal, customs officers should, when assessing a risk of an IPR infringement, take account of any 'substantial likelihood of diversion' of these goods on to the market of the Union. The customs could thus only detain goods coming from non-member States in transit provided there is sufficient evidence that they will be illicitly diverted to the internal market. However, the proposal omits to give any guidance or criteria for interpreting an intention to put goods on sale in the EU. The new Regulation would thus benefit from a further clarification in this regard.

Further, the new regulation should empower customs authorities to detain any suspected counterfeit goods, and even if in transit. Otherwise, illicit goods would continue to enter the EU market as 'goods in transit', under false statements on the origin and destination, as has been reported by businesses affected.

Guaranteeing freedom of transit was never intended to apply to illicit trade. Moreover, there should not be limits for controls when there is suspicion that public health could be endangered, irrespective of the final place of shipping of goods. Prevention and precaution
should guide customs action. While Recital 2 recognises health and safety risks of IPR infringing goods, the Regulation should specify that EU customs authorities may detain any suspected good, even if in transit, when a concrete risk of diversion onto the EU market exists.

**Small consignments**

As countering IPR violations in transit remains a challenge for Member States' customs authorities, a welcome novelty is the introduction of a mandatory EU wide application of the simplified procedure to destroy counterfeit goods without the need to formally establish an infringement in court. This can be considered a significant improvement in terms of reducing the burden both on right-holders and customs administrations alike - with expected results in trade facilitation.

This applies in particular to small consignments of suspected goods - resulting from internet sales and entering the EU through the postal service or via a commercial courier company - considering the value of the infringing goods against the burden of cost of storage and judicial procedures.

However, the notion of 'small consignments' and the related procedural deadline might benefit from further looking into. It is equally important that customs authorities inform right-holders about any significant movements of small counterfeit consignments to help them track the routes and trends of counterfeiting.

**Parallel trade**

The further extension of the scope of infringements covered by the draft Regulation is welcome. Empowering EU customs authorities to detain parallel imports, placed on the EU market without the right-holder's authorisation, should result in an improved level of IPR enforcement. While customs authorities are in a unique position to control illicit parallel trade, intercepting "grey market goods" and establishing actual infringements is likely to remain problematic.

In fact, the risk of hindering legitimate trade could increase. In order to avoid unfounded confiscations, right-holders should provide the customs with all information necessary to allow customs to seize parallel imports at the border. The expanded scope of the Regulation will need to be matched with adequate resources and training for customs.

**International cooperation**

Combating IPR infringements at the EU border must be combined with targeted actions at source to prevent the exportation of illicit goods to the EU. This requires cooperation both with third countries and at international level, including within the WTO, the World Customs Organization, and the World Intellectual Property Organization.

Customs cooperation with both source and other consuming countries is already an EU reality by way of specific initiatives such as the EU-China Action Plan on customs cooperation on IPR enforcement. Despite dialogues and efforts on technical cooperation, data exchange,
cooperation with industry, as well as some progress in legislation, real impact is missing. In fact, China\(^1\) continues to be the main source of IPR infringing goods to the EU. In 2010, 85% of all IPR infringing articles detained by EU customs came from China (64% increase compared to 2009).

While the 2004 EU Strategy for the Enforcement of Intellectual Property Rights in Third Countries is undergoing revision, and the new FISCUS program is awaited, your rapporteur sees a clear need to step up especially the targeted and customised technical cooperation on IP with the EU’s partners, and in particular with priority countries such as China, to ensure the maximum level of IPR protection for both legitimate businesses and consumers.

Further operational cooperation between customs in the EU and with third countries, including exchange of information, as well as cooperation with industry should be stepped up. Moreover, when negotiating IPR provisions in trade agreements, the EU should strive towards identical levels of protection to that within the Union.

### AMENDMENTS

The Committee on International Trade calls on the Committee on Internal Market and Consumer protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

**Proposal for a regulation**

**Recital 2**

*Text proposed by the Commission*

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding

*Amendment*

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding

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legitimate trade. For this reason, consumers need to be well-informed about the risks involved in purchasing those goods.

Amendment 2
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

Amendment

(11) It may be difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

Amendment 3
Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

(17a) Transit through the customs territory of the Union and possible distribution on the internal market of goods suspected of being imitations of products protected in the Union by a trademark, or copies of products protected

Amendment

(17a) Transit through the customs territory of the Union and possible distribution on the internal market of goods suspected of being imitations of products protected in the Union by a trademark, or copies of products protected
in the Union by copyright, related right or design, entail both considerable losses for legitimate Union businesses and health and safety risks for citizens. Customs authorities should therefore be empowered to inspect and detain any goods suspected of infringing an intellectual property right, as a precaution, where it is presumed that those goods will be distributed on the internal market.

Amendment 4

Proposal for a regulation
Recital 17 b (new)

Text proposed by the Commission

(17b) Evidence that the intention is to place those goods on sale in the Union should be considered to exist where they have been sold to a client in the Union or offered for sale or advertised for sale to Union consumers, or where documents or correspondence show that they are to be distributed on the Union’s internal market. Where the destination of the goods is not declared, even though such a declaration is required, or in cases where there is a lack of precision or relevant information in order to identify the producer or distributor of the products, a lack of cooperation with the customs authorities or where documents are discovered showing that they are intended for distribution on the internal market, it should be for the declarant or holder of the goods in question to prove that their intention is not to sell those goods in the Union.
Amendment 5

Proposal for a regulation
Recital 17 c (new)

Text proposed by the Commission

(17c) Countering intellectual property rights infringements at the Union’s external borders should be combined with targeted efforts at source. This requires cooperation both with third countries and at international level, where the Commission and Member States should build respect and promote high standards of protection for intellectual property rights. This should consist of endorsing the inclusion and enforcement of intellectual property rights in trade agreements, of technical cooperation, of encouraging discussion in the various international fora, of communication and exchange of information, as well as of further steps in operational cooperation with third countries and the industries concerned.

Justification

Countering intellectual property right infringements should benefit from enhanced bilateral cooperation as well as coordinated international action.

Amendment 6

Proposal for a regulation
Recital 17 d (new)

Text proposed by the Commission

(17d) With a view to eliminating international trade in goods infringing intellectual property rights, Article 69 of the TRIPS Agreement provides that WTO Members are to promote the exchange of information between customs authorities on trade in goods infringing intellectual property rights. Such exchange of
information should allow trafficking networks to be tracked in order to stop the manufacture and distribution of goods infringing intellectual property rights at an earlier stage of the supply chain. It is therefore necessary to establish the conditions for the exchange of information between customs authorities in the Union and relevant authorities in third countries, including on data protection.

Justification

Due to the international nature of counterfeiting and counterfeiters' expansive networks across borders, it is critical that the customs authorities be able to share and use information, including with third countries, in order to track networks and routes used by counterfeiters.

Amendment 7

Proposal for a regulation
Recital 17 e (new)

Text proposed by the Commission

(17e) In line with the Union's goal of strengthening international cooperation in the fight against counterfeiting, piracy and illicit parallel trade in goods infringing the intellectual property of registered right-holders, the new European Observatory on Counterfeiting and Piracy has a key role to play by providing all customs authorities of Member States with relevant and timely information to conduct appropriate controls of authorised importers and distributors of goods suspected of infringing an intellectual property right in the internal market as well as exporters thereof to foreign markets. This role could be further enhanced by the creation of a database of genuine Union products and services protected by registered trademarks, designs and patents and which could also be made available to
foreign customs authorities cooperating with the Union on better intellectual property rights protection and enforcement;

Amendment 8

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

Text proposed by the Commission

Amendment

4a. This Regulation shall apply to goods in transit through the customs territory of the Union which are suspected of infringing an intellectual property right.

Justification

For the sake of clarity, the treatment of goods in transit should be explicitly addressed in the new Regulation. Where there is suspicion of infringement of the rights conferred by the EU's and Member States' substantive IP law and a concrete risk of diversion of the goods onto the internal market while in transit, customs may legitimately detain the goods.

Amendment 9

Proposal for a regulation
Article 2 – point 7 – point a

Text proposed by the Commission

Amendment

(a) goods which are subject of an action infringing an intellectual property right under the law of the Union or of that Member State;

(a) goods which are the subject of an action infringing an intellectual property right under the law of the Union or of that Member State or goods for which it cannot be ruled out that they are the subject of such an action, and which at the same time pose a clear threat to the health or safety of consumers;
Amendment 10

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point g

Text proposed by the Commission

\[ g) \text{ specific and technical data on the authentic goods, including images where appropriate; } \]

Amendment

\[ g) \text{ specific and technical data on the authentic goods, including marking, such as bar-coding, and images where appropriate; } \]

Justification

In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.

Amendment 11

Proposal for a regulation
Article 6 – paragraph 3 – subparagraph 2 – point i

Text proposed by the Commission

\[ i) \text{ any information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned; } \]

Amendment

\[ i) \text{ any information relevant to the customs authorities' analysis and assessment of the risk of infringement of the intellectual property right(s) concerned, such as the authorised distributors; } \]

Justification

In order to facilitate the traceability of parallel imports, right-holders and their representatives should provide the customs with all information relevant for the identification of genuine products such as marking and the authorized distributors.

Amendment 12

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

\[ 3. \text{ Where an intellectual property right } \]

Amendment

\[ 3. \text{ Where an intellectual property right } \]

EN
ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, no action shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the customs authorities that granted the decision.

Amendment 13

Proposal for a regulation
Article 11 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, the applicant shall notify the customs authorities thereof and no further action shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the customs authorities that granted the decision.

Amendment

Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be the person entitled to submit an application, the applicant shall notify the customs authorities thereof and no further action shall be taken by the customs authorities. The decision granting the application shall be revoked or amended accordingly by the customs authorities that granted the decision.

Amendment 14

Proposal for a regulation
Article 19 a (new )

Text proposed by the Commission

Article 19a

Sharing of information and data between customs authorities

Subject to appropriate data protection safeguards, the Commission may decide that information and data collected under Article 18(3) is to be shared between customs authorities in the Union and
Justification

Cooperation with third countries is essential for countering the proliferation of trade in IPR infringing goods. In order for this cooperation to be effective, EU customs authorities should be able to share information and data on IPR violations with their counterparts in third countries, under confidentiality, and provided stringent data protection safeguards are in place.
## PROCEDURE

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| Associated committee(s) - date announced in plenary | 17.11.2011 |

| Discussed in committee | 11.10.2011 20.12.2011 |

| Date adopted | 26.1.2012 |

| Result of final vote | +: 23  
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| Members present for the final vote | William (The Earl of) Dartmouth, Laima Liucija Andrikienè, María Auxiliadora Correa Zamora, Harlem Désir, Christofer Fjellner, Carmen Fraga Estévez, Yannick Jadot, Metin Kazak, Bernd Lange, Emilio Menéndez del Valle, Vital Moreira, Paul Murphy, Cristiana Muscardini, Franck Proust, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Helmut Scholz, Peter Šťastný, Gianluca Susta, Keith Taylor, Jan Zahradil, Paweł Zalewski |

| Substitute(s) present for the final vote | Josefa Andrés Barea, George Sabin Cutaş, Mário David, Albert Deß, Jutta Haug, Syed Kamall, Silvana Koch-Mehrin, Jean Roatta, Inese Vaidere |
26.1.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS (*)

for the Committee on the Internal Market and Consumer Protection

on the proposal for a Regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights

Rapporteur (*): Marielle Gallo

(*) Associated committee - Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

Background

On 24 May 2011 the Commission adopted a communication entitled ‘A single market for intellectual property rights’ aimed at boosting creativity and innovation in Europe. This comprehensive and coherent strategy sets out a plan for a number of initiatives which the Commission intends to take by 2012 in various areas.

As part of these initiatives, the Commission also put forward a new regulation on customs enforcement of intellectual property rights, which will take the place of Regulation 1383/2003/EC.

The proposal takes account of the impact assessment carried out in 2010, based on 89 contributions, and the international context, particularly following the trade dispute between the European Union on one side and India and Brazil on the other regarding the transit of generic drugs.

The rapporteur considers the following points to be particularly important:

Considerations

PE470.069v03-00 78/95 RR:898122EN.doc
First of all, as regards the scope of the proposal for a regulation, the rapporteur considers that it should be extended to cover trade names, topographies of semi-conductor products and utility models.

The rapporteur is also in favour of including offences arising from arrangements to circumvent technical measures and other infringements of rights already enforced by customs authorities.

On the other hand, she is not in favour of parallel imports being covered by the future regulation. This practice is obviously liable to cause serious economic harm to right-holders. However, the regulation must ensure that the action of customs authorities is effective and swift while limiting the risk of hampering legitimate trade. Right-holders will also be able to take the legal action provided for in the laws of each Member State in order to claim their rights.

The rapporteur endorses the Commission proposal which seeks to bolster the rights of parties who may be affected by a customs measure. She believes, however, that a distinction must be made between economic operators who regularly carry out customs formalities and the end consumer.

Operators who regularly carry out customs formalities have an excellent knowledge of customs procedures. It is therefore important to avoid setting up cumbersome administrative procedures that prevent swift and effective action from being taken by the relevant customs authority. End consumers, on the other hand, are not acquainted with customs formalities and need more protection. They must therefore have the right to be heard before the decision is taken by a customs authority so as to have a chance to express their point of view.

The rapporteur is strongly in favour of introducing a specific procedure for the destruction of goods in small consignments. Postal service interceptions have increased significantly, from 15 000 in 2009 to over 43 000 in 2010. A simple and effective procedure should therefore be put in place to limit this practice while respecting the rights and interests of the end consumer.

Lastly, as regards data exchanges between Member States and the Commission, and in particular the establishment of a Commission central database, the provisions of Regulation 45/2001/EC, Directive 95/46/EC and the EPDS opinion of 12 October 2011 must be fully complied with.

**AMENDMENTS**

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments

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in its report:

Amendment 1

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Amendment

(2) The marketing of goods infringing intellectual property rights does considerable damage to right-holders, law-abiding manufacturers and traders. It is also deceiving consumers, and could in some cases endanger their health and safety. Such goods should, in so far as is possible, be prevented from entering the customs territory and be kept off the market and measures should be adopted to deal with this unlawful activity without impeding legitimate trade.

Amendment 2

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 this 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.

Amendment

(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 not covered by Regulation (EC) No 1383/2003. For this 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.
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 3

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 the swift enforcement of intellectual property rights, it should be provided that, where the customs authorities suspect, on the basis of adequate indications, 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.

Justification

Harmonisation with the terminology used by the Court of Justice in its judgment of 1 December 2011 in Joined Cases C-446/09 and C-495/09, Philips/Nokia (not yet published in the European Court Reports).

Amendment 4

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be

Amendment

(11) Where goods suspected of infringing intellectual property rights are not counterfeit or pirated goods, it may be
difficult to determine upon mere visual examination by customs authorities whether an intellectual property right might be infringed. It is therefore appropriate to provide that proceedings should be initiated, unless the parties concerned, namely the holder of the goods and the right-holder, agree to abandon the goods for destruction. It should be for the competent authorities dealing with such proceedings to determine whether an intellectual property right has been infringed and to take appropriate decisions concerning the infringements of intellectual property rights concerned.

Amendment 5
Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) In order to reduce to the minimum the administrative burden and costs, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

Amendment

(13) In order to reduce to the minimum the administrative burden and costs, without prejudice to the end-consumer's right to be duly informed within a reasonable time of the legal basis for the actions taken by the customs authorities, a specific procedure should be introduced for small consignments of counterfeit and pirated goods, which would allow for goods to be destroyed without the agreement of the right-holder. In order to establish the thresholds under which consignments are to be considered as small consignments, this Regulation should delegate to the Commission the power to adopt non-legislative acts of general application in accordance with Article 290 of the Treaty on the Functioning of the European Union. It is of importance that the Commission carries out appropriate and public consultations during its preparatory work, including with consumer and civil rights organisations and at expert level.
**Justification**

*Introducing a specific procedure for small consignments to reduce the administrative burden and costs must not undermine consumer confidence in electronic commerce, see recital 16 with justification.*

**Amendment 6**

**Proposal for a regulation**  
**Recital 15**

*Text proposed by the Commission*

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property rights other than for counterfeit and pirated goods *and to introduce a provision allowing the holder of the goods to express his/her views before the customs administration takes a decision which would adversely affect him/her.*

*Amendment*

(15) For further legal clarity and in order to protect the interests of legitimate traders from possible abuse of the border enforcement provisions, it is appropriate to modify the timelines for detaining goods suspected of infringing an intellectual property right, the conditions in which information about consignments is to be passed on to right-holders by customs authorities, the conditions for applying the procedure allowing for destruction of the goods under customs control for suspected infringements of intellectual property rights other than for counterfeit and pirated goods.

**Amendment 7**

**Proposal for a regulation**  
**Recital 16**

*Text proposed by the Commission*

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be

*Amendment*

(16) Taking into account the provisional and preventive character of the measures adopted by the customs authorities in this field and the conflicting interests of the parties affected by the measures, some aspects of the procedures should be
adapted to ensure a smooth application of the Regulation, whilst respecting the rights of the concerned parties. Thus, with respect to the various notifications envisaged by this Regulation, the customs authorities should notify the most appropriate person, on the basis of the documents concerning the customs treatment or of the situation in which the goods are placed. The periods laid down in this Regulation for the required notifications should be counted from the time those are sent by the customs authorities in order to align all periods of notifications sent to the concerned parties. The period allowing for a right to be heard before an adverse decision is taken should be three working days, given that the holders of decisions granting applications for action have voluntarily requested the customs authorities to take action and that the declarants or holders of the goods must be aware of the particular situation of their goods when placed under customs supervision. In the case of the specific procedure for small consignments, where consumers are likely to be directly concerned and cannot be expected to have the same level of diligence as other economic operators usually involved in the accomplishment of customs formalities, the right to be heard before an adverse decision is taken by the customs authorities should be established.

Amendment 8

Proposal for a regulation
Recital 17

(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.
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 9

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, this should not preclude the holder of the decision from seeking compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.

Amendment

(20) Given that customs authorities take action upon prior application, it is appropriate to provide that the holder of the decision granting an application for action by the customs authorities should reimburse all the costs incurred by the customs authorities in taking action to enforce his/her intellectual property rights. Nevertheless, the holder of the decision should have the right to seek compensation from the infringer or other persons that might be considered liable according to the legislation of the Member State concerned. Costs and damages incurred by persons other than customs administrations as a result of a customs action, where the goods are detained on the basis of a claim of a third party based on intellectual property, should be governed by the specific legislation in each particular case.
| Amendment 10 |
| Proposal for a regulation |
| Article 2 – point 1 – point 13 |

**Text proposed by the Commission**

1.13. any other right that is established as an exclusive intellectual property right by Union legislation;

**Amendment**

deleted

| Amendment 11 |
| Proposal for a regulation |
| Article 2 – point 5 – point 1 |

**Text proposed by the Commission**

5.1 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**

5.1 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, *as well as any trade mark sign, even if presented separately, and packaging bearing the trade marks of the counterfeit goods;*

| Amendment 12 |
| Proposal for a regulation |
| Article 2 – 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 is adequate *indication* to satisfy customs authorities that, in the Member State where these goods are found, are prima facie

**Justification**

*Harmonisation with the terminology used by the Court of Justice in its judgment of*
1 December 2011 in Joined Cases C-446/09 and C-495/09, Philips/Nokia (not yet published in the European Court Reports).

Amendment 13

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

1. Where, on receipt of an application, the competent customs department considers that it does not contain all the information required by Article 6(3), the competent customs department shall request the applicant to supply the missing information within 10 working days of dispatch of the notification.

   In such cases, the time limit referred to in Article 8 first subparagraph shall be suspended until the relevant information is received.

(See amendment to Article 7.2)

Amendment 14

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. Where the applicant does not provide the missing information within the period referred to in paragraph 1, the competent customs department shall reject the application.

(See amendment to Article 7.1)
Amendment 15

Proposal for a regulation
Article 16 – paragraph 2

**Text proposed by the Commission**

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and *images* of those items as appropriate.

**Amendment**

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may ask the holder of the decision granting the application to provide them with any relevant information. The customs authorities may also provide the holder of the decision with information about the actual or supposed number of items, their nature and *photographs* of those items as appropriate.

Amendment 16

Proposal for a regulation
Article 16 – paragraph 3

**Text proposed by the Commission**

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to 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 dispatch of that communication.

**Amendment**

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to 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 dispatch of that communication.

Amendment 17

Proposal for a regulation
Article 16 – paragraph 5

**Text proposed by the Commission**

5. The customs authorities shall inform the holder of the decision granting the

**Amendment**

5. The customs authorities shall inform the holder of the decision granting the
application and the declarant or holder of the goods of the actual or estimated quantity, the actual or supposed nature of the goods, including images of those items as appropriate, whose release has been suspended or which have been detained.

Amendment 18

Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and images of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights to provide them with any relevant information.

Amendment

2. Before adopting the decision of suspension of release or detention of the goods, the customs authorities may, without disclosing any information other than the actual or supposed number of items, their nature and photographs of those items as appropriate, request any person entitled to submit an application concerning the alleged infringement of intellectual property rights to provide them with any relevant information.

Amendment 19

Proposal for a regulation
Article 17 – paragraph 3

Text proposed by the Commission

3. Before adopting a decision to suspend the release of the goods or to detain them, the customs authorities shall communicate their intention to the declarant or, in cases where goods are to be detained, to 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 dispatch of that communication.

Amendment

deleted
Amendment 20

Proposal for a regulation
Article 17 – paragraph 6

Text proposed by the Commission

6. This Article shall not apply to perishable goods.

Amendment

deleted

Amendment 21

Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

2. The customs authorities may take samples and may provide samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Amendment

2. The customs authorities may take samples representative of the goods as a whole and may provide such samples to the holder of the decision granting the application, at his/her request, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the holder of the decision granting the application.

Amendment 22

Proposal for a regulation
Article 20 – paragraph 2 – point b

Text proposed by the Commission

b) a written agreement between the holder of the decision granting the application and the holder of the goods to abandon the goods for destruction.

Amendment

b) a written agreement between the holder of the decision granting the application and the declarant or holder of the goods to abandon the goods for destruction.
Amendment 23

Proposal for a regulation
Article 23 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities *may* deem that the declarant or holder of the goods has agreed to their destruction.

*Amendment*

2. Where the declarant or holder of the goods has not confirmed his/her agreement to destruction within the periods set out in paragraph 1(b) nor notified his/her opposition to destruction to the customs authorities that adopted the decision to suspend the release of the goods or to detain them, the customs authorities *shall* deem that the declarant or holder of the goods has agreed to their destruction.

Amendment 24

Proposal for a regulation
Article 23 – paragraph 3

*Text proposed by the Commission*

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples may be taken prior to destruction.

*Amendment*

3. The destruction shall be carried out under customs control, at the expense and under the responsibility of the holder of the decision granting the application, unless otherwise specified in the legislation of the Member State where the goods are destroyed. Samples *representative of the goods as a whole* may be taken prior to destruction.

Amendment 25

Proposal for a regulation
Article 24 – paragraph 2

*Text proposed by the Commission*

2. Article 16(3), (4) and (5) and Article 18(2) shall not apply.

*Amendment*

2. Article 16(4) and (5) and Article 18(2) shall not apply.
Amendment 26
Proposal for a regulation
Article 24 – paragraph 4

Text proposed by the Commission

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment

4. The declarant or holder of the goods shall be given the opportunity to express his/her point of view within 5 working days of dispatch of the decision to suspend the release of the goods or to detain them.

Amendment 27
Proposal for a regulation
Article 24 – paragraph 5

Text proposed by the Commission

5. The goods concerned may be destroyed where, within 20 working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Amendment

5. The goods concerned may be destroyed where, within 10 working days of dispatch of the decision to suspend the release of the goods or to detain them, the declarant or holder of the goods has confirmed to the customs authorities his/her agreement to the destruction of the goods.

Amendment 28
Proposal for a regulation
Article 28 – paragraph 1

Text proposed by the Commission

The Member States shall lay down the rules on administrative sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.

Amendment

Without prejudice to national law, the Member States shall apply the rules on administrative sanctions relating to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions provided for must be effective, proportionate and dissuasive.
Amendment 29

Proposal for a regulation
Article 31 – paragraph 1

Text proposed by the Commission

1. The competent customs departments shall notify the Commission of the following:

   a) applications for action, including any photograph(s), image(s), brochure(s);

   b) decisions granting applications;

   c) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;

   d) any suspension of a decision granting the application.

Amendment

1. The competent customs departments shall notify the Commission of the necessary information relating to the following:

   a) decisions granting applications, including applications for action and any photograph(s), image(s), brochure(s);

   b) any decisions extending the period during which the customs authorities are to take action or decisions revoking the decision granting the application or amending it;

   c) any suspension of a decision granting the application.

Amendment 30

Proposal for a regulation
Article 31 – paragraph 3

Text proposed by the Commission

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission.

Amendment

3. All information referred to in paragraphs 1 and 2 shall be stored in a central database of the Commission for a length of time which may not exceed the time required for the achievement of the objectives of this Regulation.
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| **Result of final vote** | +: 20  
| | -: 2  
<p>| | 0: 1 |
| <strong>Members present for the final vote</strong> | Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Diana Wallis, Cecilia Wikström, Tadeusz Zwiefka |
| <strong>Substitute(s) present for the final vote</strong> | Jan Philipp Albrecht, Jean-Marie Cavada, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Dagmar Roth-Behrendt |
| <strong>Substitute(s) under Rule 187(2) present for the final vote</strong> | Eva Ortiz Vilella |</p>
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<th><strong>Title</strong></th>
<th>Customs enforcement of intellectual property rights</th>
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<tr>
<td><strong>References</strong></td>
<td>COM(2011)0285 – C7-0139/2011 – 2011/0137(COD)</td>
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<tr>
<td><strong>Date submitted to Parliament</strong></td>
<td>24.5.2011</td>
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<td>IMCO 7.6.2011</td>
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<td>JURI 17.11.2011 INTA 17.11.2011</td>
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<tr>
<td><strong>Rapporteur(s)</strong></td>
<td>Jürgen Creutzmann 13.7.2011</td>
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<td><strong>Date adopted</strong></td>
<td>29.2.2012</td>
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| **Result of final vote** | +: 36  
| | –: 3  
| | 0: 1  |
| **Substitute(s) present for the final vote** | Raffaele Baldassarre, Simon Busuttil, Jürgen Creutzmann, Frank Engel, Marielle Gallo, Maria Irigoyen Pérez, Olle Schmidt, Laurence J.A.J. Stassen, Marc Tarabella, Kyriacos Triantaphyllides, Wim van de Camp |
| **Date tabled** | 2.4.2012 |