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Committee on International Trade

2011/0137(COD)

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AMENDMENTS

10 - 36

Draft opinion
Josefa Andrés Barea
(PE476.120v01-00)

Customs enforcement of intellectual property rights

Proposal for a regulation
(COM(2011)0285 – C7-0139/2011 – 2011/0137(COD))

AM_Com_LegOpinion

Amendment 10
Pablo Zalba Bidegain

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 kept off the market and 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 these products.

Or. es

Amendment 11
Marietje Schaake

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

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 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

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.

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 **intellectual** property rights under national law, topographies of semiconductor products **and** utility models, as well as any exclusive intellectual property right established by Union legislation.

Or. en

Amendment 12 **Marietje Schaake**

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.

Or. en

Amendment 13

Carl Schlyter

on behalf of the Verts/ALE Group

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 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

(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 ***five working days.*** 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 14

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Recital 17

Text proposed by the Commission

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

Amendment

(17) Under the ‘Declaration on the TRIPS Agreement and Public Health’ adopted by the Doha WTO Ministerial Conference on 14 November 2001, the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. 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 *ensure that any measures taken by them are in line with the EU's international commitments and do not prevent access to medicines.*

Amendment 15

Jan Zahradil

Proposal for a regulation

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In line with the Union's goal of strengthening international cooperation in the fight against counterfeiting, piracy and illicit parallel trade in goods infringing on 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 thereof in the Single 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;

Or. en

Amendment 16
Daniel Caspary

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Transit through the customs territory of the Union and possible diversion onto the internal market of goods suspected of infringing intellectual property rights, and in particular of counterfeit goods, entail not only considerable losses for legitimate Union businesses but also health and safety risks

for consumers. Customs authorities should therefore be empowered to inspect and detain any suspected goods by way of precaution. In order to assess the substantial likelihood of such diversion, customs authorities should take into account circumstances such as an offer for sale or advertising of the goods directed at Union consumers, a lack of information on the manufacturer or consignor of the goods or a lack of information on their destination or consignee. Where the diversion onto the internal market of a counterfeit product nevertheless cannot be ruled out, customs authorities should also be empowered to detain the product concerned where it poses clear health and safety risks for consumers.

Or. de

Amendment 17
Pablo Zalba Bidegain

Proposal for a regulation
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Transit through Union customs 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 suspected goods by way of precaution where their distribution on the internal market is assumed.

Or. es

Amendment 18
Pablo Zalba Bidegain

Proposal for a regulation
Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) Evidence that the intention is to place these 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.

Or. es

Amendment 19
Carl Schlyter
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

deleted

Amendment 20
Carl Schlyter
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 21
Carl Schlyter
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 22
Carl Schlyter
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

(h) a Community plant variety right as provided for in Council Regulation (EC) No 2100/94;

deleted

Or. en

Amendment 23

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 2 – paragraph 1 – point 1 – point i

Text proposed by the Commission

Amendment

(i) a plant variety right as provided for by the legislation of a Member State;

deleted

Or. en

Amendment 24

Marietje Schaake

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) counterfeit goods and pirated goods according to the law of the Union or of that Member State;

Or. en

Amendment 25

Daniel Caspary

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

Text proposed by the Commission

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

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 ***or where 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;***

Or. de

Amendment 26
Marietje Schaake

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

Text proposed by the Commission

(b) ***devices, products or components which circumvent any technology,*** device or component that, in the normal course of its operation, prevents or restricts acts in respect of works which are not authorised by the right-holder of any copyright or right related to copyright and which infringe an intellectual property right under the law of that Member state;

Amendment

(b) device or component that, in the normal course of its operation, prevents or restricts acts in respect of works which are not authorised by the right-holder of any copyright or right related to copyright and which infringe an intellectual property right under the law of that Member state;

Or. en

Amendment 27
Carl Schlyter
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The application and all information relevant to the identification of the goods by customs authorities as well as for the analysis and assessment of the risk of infringement of the intellectual property right(s) concerned, as defined in points (g), (h) and (i) of paragraph 3, shall be made publicly accessible through a website.

Or. en

Amendment 28

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. 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, 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.

3. 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.

Or. en

Amendment 29

Carl Schlyter

on behalf of the Verts/ALE Group

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, no action shall be taken by the customs authorities. The decision granting the extension 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 extension shall be revoked or amended accordingly by the customs authorities that granted the decision.

Or. en

Amendment 30

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

3. Once the central database of the Commission referred to in Article 31(3) is in place, all exchanges of data on decisions concerning applications for action, accompanying documents and notifications between the customs authorities of the Member States shall be made via that database.

Amendment

3. Once the central database of the Commission referred to in Article 31(3) is in place, all exchanges of data on decisions concerning applications for action, accompanying documents and notifications between the customs authorities of the Member States shall be made ***publicly available*** via that database.

Or. en

Amendment 31

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 14 – introductory wording

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:

Or. en

Amendment 32

Carl Schlyter

on behalf of the Verts/ALE Group

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. 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 ***five working days*** ,of dispatch of that communication.

Or. en

Amendment 33

Carl Schlyter

on behalf of the Verts/ALE Group

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,

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.

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 **five working days** of dispatch of that communication.

Or. en

Amendment 34

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 21 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the customs authorities have been notified of the initiation of proceedings to determine whether a design, **patent**, utility model **or plant variety** right has been infringed and the period provided for in Article 20 has expired, the declarant or holder of the goods may request the customs authorities to release the goods or put an end to their detention.

Amendment

Where the customs authorities have been notified of the initiation of proceedings to determine whether a design **or** utility model right has been infringed and the period provided for in Article 20 has expired, the declarant or holder of the goods may request the customs authorities to release the goods or put an end to their detention.

Or. en

Amendment 35

Marietje Schaake

Proposal for a regulation

Article 24 – paragraph 8

Text proposed by the Commission

8. 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

Amendment

8. 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 and of the number of items and their nature, including images of those items where appropriate.

application of such objection and of the number of items and their nature, including images of those items where appropriate.

When the declarant or holder of the goods initiates legal proceedings to determine whether the goods infringe an intellectual property right, the goods may not be destroyed within the period referred to in paragraph 5. If a court establishes that the goods do not infringe an intellectual property right, the declarant or holder of the goods can recover his legal costs from the customs authority or party who ordered the destruction of the goods.

Or. en

Amendment 36

Carl Schlyter

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 28 a (new)

Text proposed by the Commission

Amendment

Article 28a

Penalties on applicants

Applicants who repeatedly submit applications concerning the alleged intellectual property rights violations that prove to be false in the majority of cases over a period of two years shall lose the right to submit applications for a fixed period and may face penalties.

Or. en