



# Commission proposal for a Regulation concerning customs enforcement of intellectual property rights



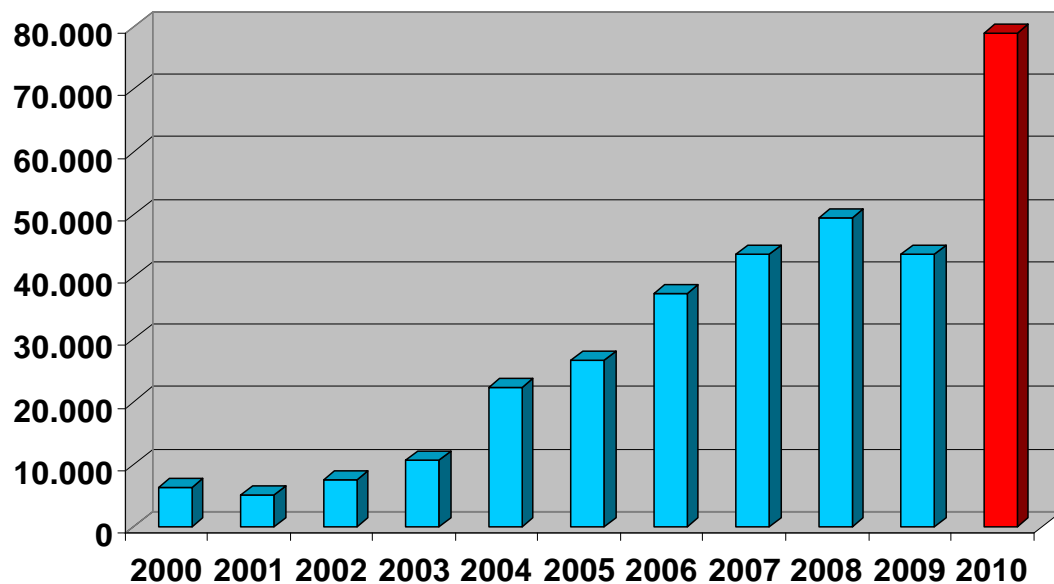
# What is the European Commission proposing?

- Proposal for a Regulation of the European Parliament and the Council concerning customs enforcement of intellectual property rights
- The proposal would replace Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

## Background - What does customs do on IPR enforcement?

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

# Number of registered cases 2000-2010



Number of cases	
2000	6.253
2001	5.056
2002	7.553
2003	10.709
2004	22.311
2005	26.704
2006	37.334
2007	43.671
2008	49.381
2009	43.572
2010	79.112

## Why the change ?

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

# Impact Assessment – Problems and policy options

## ■ **Three problems :**

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

## ■ **Three policy options** modulated according to each problem and assessment criteria :

- Baseline scenario
- Use of non-legislative instruments, or
- Amendment of Regulation 1383/2003

## ■ **Impacts** difficult to measure due to lack of reliable data on the scale of trade in IPR infringing goods

# Significant elements of the proposal

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



# Chapter I – Subject matter, scope and definitions

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



# What rights are covered?

- Trademarks
- Designs
- Copyrights
- Geographical indications
- Patents
- Plant variety rights
- Topographies of semiconductors
- Utility models
- Trade names
- Parallel trade
- Overruns

# Chapter II – Applications for action by customs

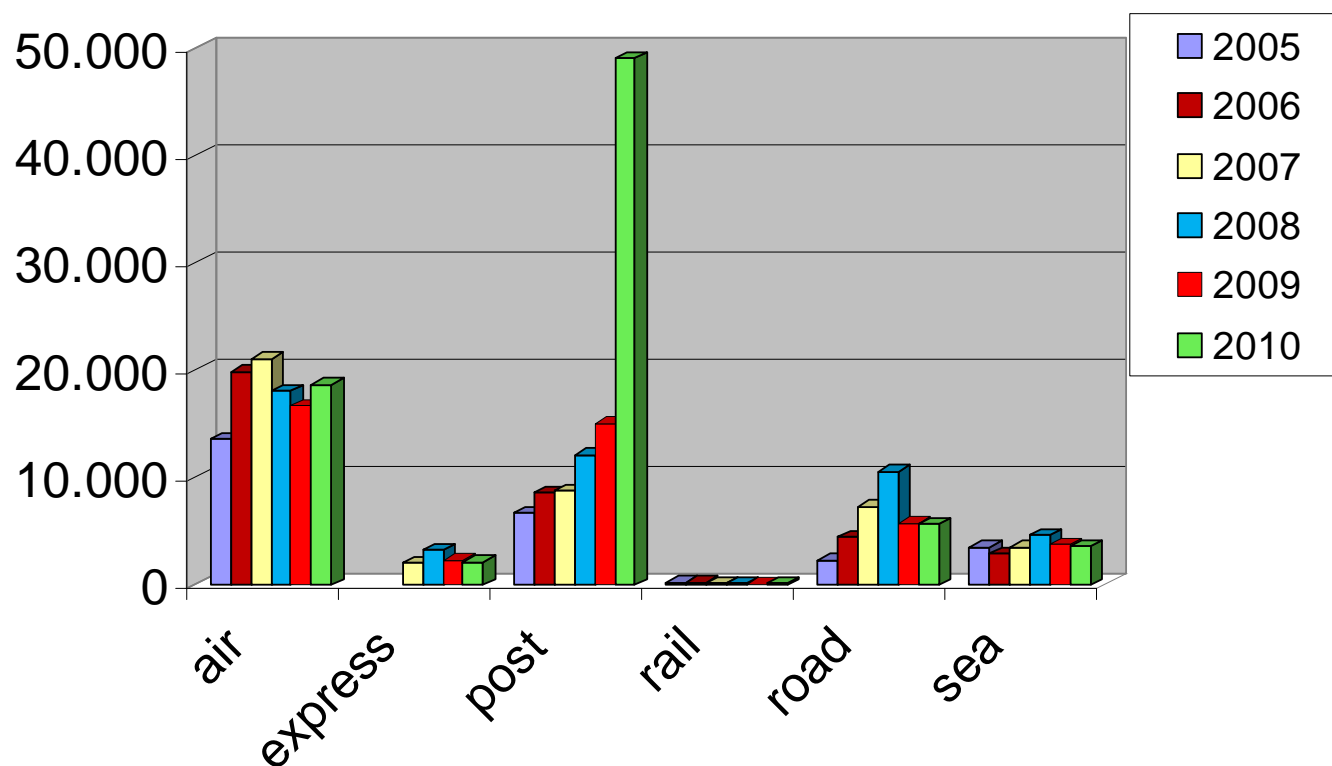
- Basic system already well established:
  - submission of an application
  - processing of applications
  - customs decision whether to grant application
  - notification obligations
  
- Clarification of certain conditions:
  - customs decisions within time limits
  - ex-officio
  
- Undertaking to bear costs, Article 6.3(n)

## Chapter III – Action by customs

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

# What is the concern about small consignments?

Number of registered cases by means of transport during the period 2005-2010



## Chapter IV - Liability, costs and penalties

- Liability of customs
- Liability of holder of the decision granting the application
- Costs

# Chapter V – Committee, delegation and final provisions

- Implementing act
- Delegated act
- Exchange of data
- Final provisions

# Commission proposal for a new Regulation concerning border enforcement of IPR

Thank you for your attention

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