



## Review of EU Customs Anti-Counterfeiting Regulation

The Commission was instructed by the EU Council in 2008 to consider improvements to the current regulation (EC 1383/2003) under which customs authorities suspend goods for import, export or in transit when they appear to be counterfeit or pirated, or to otherwise infringe an IP right. The Council was increasingly concerned about the globalisation of counterfeiting, especially of dangerous counterfeit goods, and about the sale of counterfeits over the Internet. The Commission consulted widely during the first half of 2010 and is presently considering the results. The Federation has responded in the past to similar consultations but on this occasion, BUSINESSEUROPE responded on behalf of Europe-wide industry.

In seeking views, the Commission appeared to be concerned that the regulation provides for action against goods in transit (article 1), citing concerns by India and Brazil about the suspension of medicines in transit through the EU (for example, when the medicines were patented in Europe but not in India or Brazil), and expressing a desire “to make best use of” customs resources.

The Federation has always been firm that **counterfeit** and **pirate** goods in transit should be stopped and BUSINESSEUROPE was strongly of this view.

The Commission also questioned whether the regulation should be reduced in scope, e.g., be restricted to counterfeit and pirated goods. BUSINESSEUROPE confirmed that the full range of IPRs should be covered, as at present (article 2).

The regulation contains derogations in respect of parallel trade, goods manufactured outside agreed terms, e.g., overruns, and small quantities of non-commercial nature in personal baggage (article 3). The Commission asked whether these derogations should continue. BUSINESSEUROPE said, as we have done in the past, that such derogations should not be provided.

Under the regulation, there is a simplified procedure for abandoning goods for destruction under customs control if the parties agree, thus eliminating the need to go to court, but this procedure is optional for member states (article 11). The Commission noted that this provision is not applied uniformly throughout the EU. BUSINESSEUROPE pressed for the simplified procedure to become mandatory.

The Commission pointed out that the present system is not well adapted to tackle the growing impact of sales of small consignments over the internet and proposed that a new system should be introduced, where the right holder would not be involved, while the “holder” of the goods would be invited to abandon them for destruction. “Small consignment” would have to be defined and a procedure

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation  
Registered Office 5th floor, 63-66 Hatton Garden, London EC1N 8LE

Email: [admin@ipfederation.com](mailto:admin@ipfederation.com) | Tel: 0207 2423923 | Fax: 0207 2423924 | Web: [www.ipfederation.com](http://www.ipfederation.com)

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established for when the holder of the goods did not agree to destruction. BUSINESSEUROPE suggested that a modification of the simplified procedure could solve the issue of small consignments.

The attribution of storage and destruction costs to right holders has, according to the Commission, created a serious obstacle to the effectiveness of the regulation. It seems that some states have expected right holders to meet heavy charges, far more than the costs incurred by the customs authorities. The Commission also asked about the responsibilities of the various operators involved, including not only the right holders and goods owners, but also shippers, carriers, consignors, customs declarants, warehouse holders. The BUSINESSEUROPE response has been that only customs costs should be charged, costs incurred by others should be dealt with under civil or commercial law. Costs should fall on the infringer (which is not so at present). Intermediaries should provide full and immediate cooperation to avoid costs falling on them. Ordinary civil rules should apply for reimbursement of costs.

The Commission has said that, if appropriate in the light of its review, it will prepare a proposal for a replacement Regulation, as part of the Customs Action Plan to combat IPR infringement in the years up to 2012.

AS, 10 October 2010