



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment accompanying the proposal for a Regulation concerning customs enforcement of intellectual property rights (IPRs)

(draft version of 20 December 2010)

(A) Context

Council Regulation (EC) No 1383/2003 concerning customs enforcement of intellectual property was adopted in July 2003 to implement the 1994 Agreement on Trade Related aspects of IPRs (TRIPS). With a view to further strengthening international standards, in June 2008 the negotiations on a new instrument called the Anti-Counterfeiting Trade Agreement (ACTA) were launched. In September 2008 the Council invited the Commission and the Member States to develop a new Customs Action Plan for the years 2009-2012 to combat IPR infringements. The review of the Regulation was incorporated into the plan and was carried out by the Commission, in close collaboration with the Member States.

(B) Overall assessment

The report requires further work on several important points. Firstly, it should better justify the scope of this impact assessment. Secondly, the report should provide available evidence to demonstrate the existence and scale of the problems identified (e.g. some IPRs are being infringed but are outside the scope of the Regulation, current procedures to enforce IPRs are too burdensome), and explain why they were not addressed by the current Regulation. Third, the report should present the views of customs authorities on the options and analyse whether a more limited extension of the scope of the Regulation could be a more cost-effective solution. Finally, it should estimate more precisely the costs and benefits of the proposed option and better explain why it is expected to have a positive impact on the level of IPR enforcement.

(C) Main recommendations for improvements

(1) Better justify the scope of this impact assessment. The report should give an overview of the problems identified by the review of the Regulation and on this basis justify the selection of issues to be addressed by the current proposal. In this context, given that some stakeholders believe the broad scope of the current Regulation creates problems, the report should briefly respond to those concerns.

(2) Provide available evidence to demonstrate the existence and scale of the problems identified and explain why they were not addressed by the current Regulation. Drawing on available evidence (e.g. anecdotal examples, opinions of experts, complaints by right-holders etc.), the report should illustrate the existence and scale of infringements for the types of the IPRs which are proposed for inclusion in the Regulation. In this context, it should also illustrate the magnitude of damage to right-holders resulting from IPR-infringing trade. The report should also indicate the scale of the costs associated with the current procedure applied for small consignments and give an example of it, and indicate costs for the non-implementation of the simplified procedure. An indication of how the problems identified are likely to be distributed by Member State should also be given for each of those problems. In addition, the report should explain why the types of IPRs currently proposed to be added to the Regulation were excluded from its scope in 2003, and whether the rationale for that exclusion is now no longer valid. The report should also explain why certain Member States have not taken advantage of the simplified procedure allowed by the current Regulation and why it was not made mandatory in 2003.

(3) Present the views of customs authorities on the options, and analyse a sub-option of a more limited extension of the scope of the Regulation. The report should present the views of customs authorities on the options. In order to further strengthen the justification for the proposed extension of the scope of the Regulation, the report should consider sub-options to the preferred legislative option, exploring the choices on content, including a sub-option of extending the Regulation only to those IPRs which are less problematic/less resource-intensive for customs authorities to enforce. The report should assess how such a sub-option would perform as regards cost-effectiveness in comparison with the preferred option. As regards clarifying the rules for goods in transit, the report should make clear that the options for action in this area are still tentative as they depend on the settlement of a pending WTO dispute. The report should also briefly justify why the option proposed concerns only medicines, and not all goods in transit.

(4) Estimate more precisely the costs and benefits of the options and explain better why the preferred option is expected to have a positive impact on the level of IPR enforcement. The report should be more precise about additional costs for customs authorities and provide estimates/examples of the savings associated with simplifying the procedures. It should explain how the extension of the scope of the Regulation to the new IPRs would have a tangible impact on improving IPR enforcement given that (i) the infringements of the new IPRs added to the scope are complex and difficult to identify, (ii) customs authorities are currently giving lower priority to complex infringements, (iii) the overall administrative budget of customs authorities is not expected to change. It should also explore the impacts on markets and consumers of the inclusion of parallel trade in the scope of the Regulation.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The description of options should be more rigorously separated from the assessment of their impacts.

(E) IAB scrutiny process

Reference number	2010/TAXUD/001
External expertise used	No
Date of IAB meeting	26 January 2011