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REPORT FROM THE COMMISSION

on the implementation of Council Regulation (EC) No 3295/94 of 22 December 1994 as regards border controls on trade in goods which may be counterfeit or pirated

**Proposal for a
COUNCIL REGULATION (EC)**

amending Regulation (EC) No 3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

(presented by the Commission)

SUMMARY

On 22 December 1994 the Council adopted Regulation (EC) No 3295/94 concerning the role of customs in combating counterfeit and pirated goods. This document puts into effect the provisions of the TRIPS Agreement with regard to intellectual property rights. This Agreement was one of the results of the Uruguay Round and represents one of the most important international treaties in the field.

Operation of the system

The main purpose of the Regulation is to allow the customs authorities to suspend customs operations in cases where the goods concerned are suspected of being counterfeit or pirated goods covered by an intellectual property right (brand or trade mark, design right, copyright or neighbouring right) in respect of which the right holder has requested "customs protection".

During the period of suspension, the right holder may petition the competent national authorities (normally the judiciary) to take action on the matter. If there is no referral to the courts, the goods are released.

The system set up by the Regulation has produced some very good results in the field. In the two-year period July 1995-June 1997 customs took action in 4 133 cases as compared to fewer than 2 000 during the seven and a half years (1 January 1988 to 30 June 1995) of application of the previous Regulation.

Operations were carried out on freight, passenger and postal traffic but the most significant cases, in terms of counterfeit goods seized, involved freight. These mainly concerned counterfeit trade marks but a growing number of cases has involved goods which infringed copyright, neighbouring rights or design rights. Although checks were carried out mainly on imports (release for free circulation), they have gradually increased in relation to export, re-export and transit operations to the point that they are now producing some very encouraging results in those fields too.

The improvements proposed by the Commission

Since the results have proved satisfactory, the Commission now proposes to extend the scope of the Regulation and modify it to reflect the development of Community legislation on intellectual property rights. The improvements envisaged by the Commission have already been favourably received by the main trade associations concerned at a meeting in Brussels on 23 July of this year.

The Commission would therefore like to introduce amendments in relation to the following aspects:

- * extension of the scope of the Regulation to cover a new intellectual property right, i.e. some patents;
- * extension of the customs authorities' scope for action to cover free zones and free warehouses and all suspect goods from the moment that they come under customs supervision;

- * updating (simplifying) the Regulation to take account of the Community trade mark (fully operational since 1 April of 1996) through the introduction, for the benefit of holders of such marks, of a single system for applying for "customs protection" which is valid in a number of Member States.

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Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods has applied since 1 July 1995¹.

Article 15 of the Regulation requires the Commission to report regularly to the European Parliament and the Commission on the operation of the system, and in particular the economic and social consequences of counterfeiting, and to propose, within two years of the Regulation's implementation, any amendments or additions required. This communication accompanies the report drawn up by the Commission on this subject.

It takes stock of the first two years of application and contains a list of measures likely not only to strengthen the part played by the Regulation in countering counterfeiting and pirating but to streamline the administrative procedures necessary for its implementation, thereby benefiting holders of certain intellectual property rights.

1. The content of Regulation (EC) No 3295/94

1.1. Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods is intended to protect the Community's external frontier and applies solely to trade with third countries. It complements national machinery for the protection of intellectual property rights.

1.2. It repealed and replaced Council Regulation (EEC) No 3842/86 of 1 December 1986 laying down measures to prohibit the release for free circulation of counterfeit goods² in order to:

- * extend the protection afforded by customs to other intellectual property rights and customs procedures;
- * enhance the effectiveness of the system of customs protection provided for in that Regulation;
- * take account of the Agreement establishing the World Trade Organization signed in Marrakesh on 15 April 1994, the annexes to which include the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), one of the most important international treaties on intellectual property³. Part III of the TRIPS Agreement is entitled "Enforcement of intellectual property rights" and contains a section on special requirements related to border measures (Articles 51 to 60 of the Agreement): Regulation No 3295/94 is in conformity with this section.

¹ OJ L 341, 30.12.1994, p. 8.

² OJ L 357, 18.12.1986, p. 1.

³ Annex 1 C; OJ L 336, 23.12.1994, p. 213.

- 1.3. The Regulation entitles the holders of certain intellectual property rights (trade marks or brands, copyright and related rights and designs), persons authorized to exercise such rights and their representatives to apply to customs to detain or suspend the release of suspected counterfeit or pirated goods for a fixed period (normally ten days) to give the applicant time to petition the competent authorities (normally the judiciary) for a substantive decision on whether the intellectual property rights in question have indeed been infringed. In Germany, where the customs authorities themselves are competent to take substantive decisions, recourse to the judiciary is necessary only in cases where the importer has first appealed against the detention measure.
- 1.4. Customs may also act on their own initiative, i.e. without a prior application, where goods are suspected to be counterfeit or pirated. In this case, the period for which release may be suspended or goods detained is shorter (three days), simply permitting the right holder concerned to apply for customs protection.
- 1.5. The Regulation has the following structure:
 - Chapter I sets out the scope of the Regulation and the definitions necessary for its implementation.
 - Chapter II expressly prohibits the release for free circulation (i.e. the import), export, re-export or entry for a suspensive procedure of counterfeit and pirated goods found to be counterfeit or pirated in the wake of action by customs under the Regulation.
 - Chapter III covers the triggering of the mechanism either in response to an application from the holder of a right or on the customs authorities' own initiative.
 - Chapter IV lays down the conditions governing action by the customs authorities and the authority competent to take a substantive decision.
 - Chapter V stipulates what is to be done with goods found to be counterfeit or pirated.
 - Chapter VI (Final provisions) covers such aspects as liability, excludes from the scope of the Regulation goods of a non-commercial nature contained in travellers' personal luggage within the limits laid down in respect of relief from customs duty (ECU 175) and binds the Member States to impose penalties in the event of breaches of the Regulation. It likewise obliges the Member States to communicate to the Commission all relevant information on the implementation of the Regulation and requires the Commission, within two years of the Regulation's implementation, to report to Parliament and the Council on the operation of the system and propose any amendments or additions required. Such is the purpose of this report.

2. The implementation of Regulation (EC) No 3295/94

- 2.1. The Commission has adopted implementing measures under Commission Regulation (EC) No 1367/95 of 16 June 1995⁴.
- 2.2. Though directly applicable, the Regulation also called for the adoption of a number of measures at national level, including the appointment of a national authority competent to handle holders' applications for protection or the adoption of penalties. The Member States were given six months from the publication of the Regulation to its entry into application.
- 2.3. It should be noted that, although the Regulation is addressed directly to the national customs authorities, particularly as they are the only authorities competent to deal with applications within the meaning of the Regulation, collaboration and cooperation with other national administrative departments has not been ruled out in practice.
- 2.4. By 1 July 1995 most Member States had adopted the national measures needed for the implementation of the new rules. In Belgium, however, though an authority competent to handle right holders' applications for protection was appointed early on, a Royal Decree laying down the national measures necessary for the implementation of the Regulation did not come into force until 14 December 1996. Though this delay was something of an inconvenience to right holders, the Belgian authorities nevertheless performed checks and obtained some significant results during the period in question.
- 2.5. There are still problems with the implementation of the Regulation by some Member States.

Belgium (legislation in preparation) and Greece, for example, have still to comply with the obligation to adopt effective, proportionate and deterrent penalties to protect designs.

Furthermore, while the Regulation does not preclude a Member State from appointing several authorities to handle applications for protection, an application is supposed to cover the entirety of the national territory (single application). This is not currently the case in Greece where ten competent authorities have been appointed, each of them dealing with a given region. Contrary to the provisions of the Regulation, a right holder has to complete ten applications to obtain customs protection throughout Greek territory.

3. Statistics on the operation of the system

- 3.1. The system introduced by the Council provides for the monitoring of its application in the Member States.
- 3.2. Data for the two-year period 1 July 1995-30 June 1997 show that the Member States suspended release or detained goods in 4 133 cases.

⁴ OJ L 133, 17.6.1995, p. 2.

3.3. This figure shows that the system introduced by the Regulation is not only operational but working well. Customs have intervened far more often in the two years since Regulation (EC) No 3295/94 has applied than in the entire seven and a half years of Regulation (EC) No 3842/86 (1 842 cases in total).

3.4. The 4133 cases of action under the new Regulation can be broken down as follows:

Germany:	1 844
France:	527
United Kingdom:	487
Spain:	459
Netherlands:	390
Denmark:	139
Belgium:	127
Italy:	71
Finland:	63
Luxembourg:	18
Sweden:	5
Ireland:	3

3.5. The Commission has received no statistics concerning the other Member States. Austria says that it has so far received only three applications and that no action had been taken prior to 30 June 1997. Portugal says that it has taken no action as it has received only one application for protection. However, the Commission has been unable to obtain any information concerning Greece, where no action would appear to have been taken during the period in question. Whatever the case may be, the application system set up by Greece (described in 2.5) would appear to have deterred holders.

3.6. A more detailed analysis of the reports submitted by the Member States can be found in Annex 2.

4. Trade flows detected under Regulation (EC) No 3295/94

4.1. As the statistics communicated by the Member States bear out, the system is working well and producing encouraging, even highly satisfactory, results. It is therefore worth looking at these figures in terms of the types of movements concerned.

4.2. It should be noted, however, that the rules governing the single market mean that this customs act applies only to goods moving between third countries and the Community. The Regulation, by its very nature, precludes the detection of counterfeit or pirated goods manufactured inside the Community or circulating between Member States. Nevertheless, comparable provisions (controls carried out by customs) exist in national law in some Member States.

Moreover, the Commission is continuing to follow closely questions concerning the fight against counterfeiting and pirating within the Community. This action is of prime importance in achieving the eradication of - or at least a substantial reduction in - counterfeiting and pirating.

- 4.3. Not all Member States break down their statistics by freight, passenger and postal traffic. Where this information is provided, however, it is very interesting. For instance, of the 657 cases recorded by German customs in the first six months of 1997, 347 (52%) concerned travellers and only twelve goods sent by post. Of 527 cases reported by France, 265 (50%) involved travellers and 22 the post. In Spain, 243 (53%) out of a total 459 cases involved travellers and two the post. Of 390 cases in the Netherlands, 161 (41%) concerned travellers and 129 the post. In terms of the quantities seized, however, most searches of travellers' baggage revealed fewer than ten articles. Thus, in terms of efficiency, checks on freight operations obviously produce the best results, given that a single seizure may involve thousands of articles of various kinds (see Annex 2 for noteworthy cases). Postal checks too can sometimes yield very interesting results. The customs authorities in the Netherlands, for example, were able to seize more than 3 000 pirate CDs originating in Bosnia-Herzegovina as the result of an operation involving a consignment sent by post.
- 4.4. Most of the products seized are consumer goods (clothing and watches in the main). While articles bearing a prestigious label, be they clothes, watches or leather goods⁵, remain prone to counterfeiting, there is increasing counterfeiting of "in" brands, particularly in the field of sports (sportswear, sports shoes, caps with the logos of leading football or basketball teams, a wide range of objects bearing brands specializing in sports goods), articles for children (clothing and gadgets bearing brands targeted at children) and computer products and video games (microprocessors, CD-ROM's, consoles and games for them). The brands concerned are mainly European or, in the case of sports goods, articles for children and computer products, American.
- 4.5. In addition to spare parts for motor vehicles and toys, the diverse products concerned include sunglasses, pens, garden gnomes, garden chairs, playing cards, biscuits, switches and pans.
- 4.6. Regulation (EC) No 3295/94 also covers "parts" for counterfeit goods, i.e. trade mark symbols (logos, labels, stickers, brochures, instructions for use or guarantee documents) or packaging (even empty), enabling customs to deal with another form of counterfeiting: unlabelled goods are imported into the Community in a number of consignments while trade mark symbols such as labels or buttons are brought in with a traveller's luggage, the counterfeit goods then being assembled in the Community. The large quantities of labels, buttons and rivets detected, particularly in the United Kingdom (see Annex 2), show the scale of the problem and how important it is for customs to pay particular attention to trade mark symbols.

⁵ Note that very few cases involved perfumes or toilet waters.

- 4.7. The statistics provided by the Member States also show that the Regulation is used mainly to seize goods at the point of release (70% of cases), action at other stages of the customs process being far less frequent, though not unknown. Furthermore, some seizures in Finland in the course of export/re-export show the benefits of being able to act at a stage other than release. In ten operations, Finnish customs intercepted 130 576 shoes, 104 316 shirts, 32 400 video games, 15 487 pairs of jeans and 13 650 coats, all of which were destined for Russia.
- 4.8. In most cases customs acted against goods bearing a counterfeit brand or trade mark (over 90% of cases). This is not surprising, given that the implementation of Regulation (EC) No 3842/86 provided customs with some experience of counterfeit goods, which are also somewhat easier to detect than abuses of other forms of intellectual property.
- 4.9. The results in respect of pirated goods are encouraging none the less. Customs are increasingly active on this front. One intervention in ten now involves goods protected by copyright. There is therefore every reason to believe that results will continue to improve in spite of the fact that it is far harder for customs to detect breaches of copyright or a related right than offences against a brand or trade mark, which are far more visual.
- 4.10. Results on designs have been poorer, though not negligible (5.8% of interventions). Apart from the fact that this is a new area for customs, it should be borne in mind that, in most cases, goods seized by customs combine the counterfeiting of a brand with the pirating of a design. In such cases, customs administrations usually prefer to act on the basis of the counterfeiting, which is far easier to detect.

5. The economic and social impact of counterfeiting

- 5.1. Since Regulation (EC) No 3295/94 only concerns specific trade flows (import/export deals with third countries), it is in no way a suitable tool for gauging the economic and social impact of counterfeiting in the Community.
- 5.2. It is not easy to discern the scale of the counterfeiting and pirating phenomenon. Numerous professional organizations at national, European or international level regularly produce estimates of counterfeiting and pirating. These do give a better idea of the phenomenon, but still only a small insight.

The adverse effects of counterfeiting and pirating on employment in the Member States, on the collection of direct and indirect taxes and on product quality, to the detriment of consumers, are incontestable. However, it is currently not possible to put precise figures on these.

6. Amendments and additions proposed by the Commission

- 6.1. Apart from a few problems with implementation in a certain Member States (see 2), the Commission has observed no particular difficulties regarding the application of Regulation (EC) No 3295/94. The structural problems affecting the previous Regulation (EEC) No 3842/86 were resolved in the drafting of Regulation (EC) No 3295/94, the system is now operational and its effectiveness is hampered neither by structural problems nor by divergent interpretations of its provisions.

6.2. The Commission therefore proposes to go further, extending the system to cover another intellectual property right and goods with other customs statuses and adjusting the Regulation to take account of the Community trade mark.

(a) *Extending the scope of the Regulation to patented inventions*

6.3. Patents are a vital aspect of intellectual property and at the heart of the machinery available for safeguarding innovation. They allow people to profit from their own ideas and creativity. A patent protects an inventor from competitors seeking to profit unfairly from his work. It legally guarantees a return on investment in research and development. Protecting patents is therefore vital to the Community: safeguarding innovation enables European products to develop in the face of international competition and so helps the European economy hold its own internationally.

6.4. The inclusion of patents was discussed during the drafting of Regulation (EC) No 3295/94, but it was decided at that time to reconsider the matter later, notably in the light of the results achieved in the matter of copyrights and designs.

6.5. In view of the statistics supplied by the Member States, it now seems worth a try. Admittedly, it will not be easy for customs officers to spot goods breaching a patent inasmuch as the offence is not immediately visible to the naked eye and may require officials to examine complex scientific documentation. These difficulties must not, however, be allowed to stand in the way of the experiment, especially one that reflects frequent requests from the trade associations concerned. Moreover, while the TRIPS Agreement does not bind contracting parties to apply the "border measures" in Articles 51 to 61 to goods in breach of patents, it does make provision for them to do so.

Nevertheless it seems appropriate to limit the extension of the scope of the Regulation to patents on products, excluding those on processes. The latter do not lend themselves easily to a system of frontier-based measures. Of course there is nothing to prevent the holder of a patent on a process from going to the national courts when he considers that his patent has been improperly used and benefiting in this content from the "reversal of the burden of proof".

On the other hand, supplementary protection certificates (SPCs) for medicinal and plant protection products should be included. In these cases, customs' action - and the information the holder must provide - is virtually the same as for a patent on a product. Furthermore, in the case of SPCs, counterfeiting these products puts basic interests such as human or animal health at stake.

(b) *Extending the scope of the Regulation to all customs statuses*

6.6. Endorsing the request from both the Member States, and in particular Belgium and France, and certain trade associations, the Commission believes that the Regulation should cover all counterfeit or pirated goods, whatever their customs status. Customs would then be able to intervene in cases other than release for free circulation, export, re-export or entry for a suspensive procedure.

- 6.7. In practice, this extension would cover the following specific scenarios: goods in a free zone or warehouse and goods under customs supervision, including those in temporary storage, i.e. goods that have been brought into the Community customs territory and placed in temporary storage areas or facilities pending assignment to a customs-approved treatment or use (release for free circulation, export etc.)⁶.
- 6.8. Even if the Regulation, in its current form, permits such goods to be intercepted when their status changes, customs nevertheless need to be able to act when or while goods are being stored. Customs officials often discover goods likely to be counterfeit or pirated and find themselves having to wait until the goods either leave the free zone or warehouse or cease to be in temporary storage (through assignment to a customs-approved treatment or use). Yet the goods in question might very well be spirited away in the meantime, especially if the culprit has reason to believe that customs harbour suspicions about the goods.

(c) Updating the Regulation to take account of the Community trade mark

- 6.9. Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark⁷ provides for the establishment of Community arrangements for trade marks whereby undertakings can by means of one procedural system obtain Community trade marks to which uniform protection is given and which produce their effects throughout the entire area of the Community. The Community trade mark has been fully operational since 1 April 1996.
- 6.10. The Community trade mark is governed by a single Community regulation, which is directly applicable in all Member States. It constitutes a single right conferring uniform protection throughout the Community. It does not, however, replace Member States' trade marks.
- 6.11. In order to let the Community trade mark flourish, the Commission intends to simplify the administrative side of protecting the Community trade mark under Regulation (EC) No 3295/94 by allowing a single application for customs protection to be lodged instead of the fifteen currently required to cover the whole of the Community's territory.
- 6.12. Though retaining the option of using the current system and lodging a series of applications, the holder of a Community trade mark could alternatively apply for action in a Member State of his choice and specify the other Member States in which action is sought.
- 6.13. The application would be handled by the competent authority of the Member State concerned. Acceptance (or rejection) would be valid for all the Member States specified; it would be for the competent authority of the Member State in which the application has been lodged to notify the relevant authorities of the other Member States concerned of the decision taken.

Goods may spend 45 days in temporary storage if they arrive by sea and 20 days in all other cases.

⁷ OJ L 11, 14.1.1994, p. 1.

- 6.14 However, in the absence of a unified Community customs administration, any fees and guarantees required in the individual Member States concerned by an application would continue to be dealt with nationally.
- 6.15 A uniform period of protection would have to be introduced for Community trade marks together with standard forms for applying for the protection of a Community trade mark and for the processing of such applications by the Member States.
- 6.16 The advantage of this system is that it slots easily into the current one since it requires the setting-up neither of a central authority nor of a unified guarantee system, which would pose insurmountable legal and practical problems. It would also serve as an example and a precedent once a Community design⁸ has been created.

7. The demands of the trade associations concerned

- 7.1. The Commission has had several meetings with trade associations working in the field of intellectual property and right holders to discuss the implementation and operation of the Regulation. Their comments have also been relayed by the Member States' delegates to the Customs Code Committee-Counterfeit Goods Section.
- 7.2. For the purposes of drafting this report the Commission met the main trade associations concerned on 23 July 1997 to give them an opportunity to make known their views and wishes.
- 7.3. At this meeting the Commission's representatives outlined the three ways in which they believed the Regulation could be amended (see 6). Apart from the objections of one association present at the meeting to extending the scope of the Regulation to encompass patents, these proposals were very well received since they reflected demands that the associations had made or wished to make.
- 7.4. Various other issues were touched on, with the Commission adopting the following positions:
- (a) *Non-commercial imports in travellers' baggage***
- 7.5. Business circles concerned have long been arguing for the abolition of the exclusion in Article 10 of Regulation (EC) No 3295/94. This clause excludes from the scope of the Regulation goods of a non-commercial nature contained in travellers' personal baggage within the limits of the duty-free allowance (ECU 175). This "tolerance" is held to foster small-scale trafficking and send inappropriate signals to travellers and tourists.
- 7.6. While acknowledging the existence of small-scale trafficking, the Commission feels it does not alter the principle that intellectual property rights are limited to commercial transactions, a position which is, moreover, consistent with Article 60 of the TRIPS Agreement. Furthermore, the relatively flexible concept of "goods of a

⁸ OJ C 29, 31.1.1994, p. 20.

non-commercial nature" affords customs scope for handling a wide range of situations. The considerable number of seizures from travellers shown in the statistics provided by the Member States (see 4 above and Annex 2) should reassure business circles that customs' hands are not tied in this respect.

7.7. The Commission therefore believes that Article 10 should be retained in its present wording.

7.8. In order to stay the fears of business circles, the Member States should adopt measures to publicise the rules in force more widely and raise the awareness of travellers, particularly tourists.

(b) *Excluding parallel imports from the scope of the Regulation*

7.9. Business circles have long been calling for the extension of the Regulation to cover parallel imports, i.e. goods manufactured with the right holder's consent but imported without his consent.

7.10. The Commission has always opposed this demand. In the case of parallel imports, the goods cannot strictly speaking be termed counterfeit, given that, within the law of the exporting country, the goods have used an intellectual property right. Furthermore, the holder of an intellectual property right in the Community merely has the option of opposing their importation into the Community, not an obligation. Moreover, in this case the task of customs officials would be extremely difficult, since the goods are physically identical to approved imports. The Commission therefore believes that the Regulation should not be amended in this respect.

(c) *Fees and guarantees*

7.11. The Regulation permits Member States to collect a fee for customs protection to cover the administrative costs incurred through handling the application and seek a guarantee to cover any liability for damage and/or storage costs.

7.12. In practice, the level of fees and guarantees differs greatly from one Member State to another. Some business circles would like to see these sums harmonized. The Commission sees no need for this. The fact that these sums differ from one Member State to another in no way affects the operation of the system provided for in the Regulation. Were a Member State to set these amounts at a level deterring applications for customs protection, the Commission would obviously have to step in and deal with the Member State concerned.

(d) *The cost of destroying counterfeit or pirated goods*

7.13. Who bears the cost of destroying counterfeit or pirated goods varies from one Member State to another. Depending on the Member State concerned, the costs are borne by the perpetrator of the offence, the owner of the goods, the right holder or the State itself. In most cases, however, it is for the judge who rules that goods are counterfeit or pirated to determine the person or authority liable for the cost of destroying them. Business circles are calling for the Regulation to resolve this point by specifying who is to cover the costs in question.

7.14. The Commission believes that a degree of flexibility should be allowed here so that each Member State can adopt the solution that suits it the best as, in any event, goods found to be counterfeit or pirated must be removed from commercial channels.

(e) Access to samples

7.15. While goods are detained or their release suspended, customs may take samples for the purposes of the procedure.

7.16. Several organizations representing right holders have asked for the Regulation to be amended to allow customs to send them some of the samples directly to help them draw up their own reports.

7.17. The Commission believes that the Member States should be allowed some room for manoeuvre here and that it is up to them, under their own national legislation, to assess the best means, in view of time and cost constraints in particular, of allowing right holders to inspect goods that have been detained or whose release has been suspended. The Commission therefore considers that there are no grounds to amend the Regulation in this respect.

(f) Penalties

7.18. The Regulation requires the Member States to impose penalties where goods which have been detained or whose release has been suspended prove to be counterfeit or pirated. Under Article 5 of the EC Treaty and the case law of the Court of Justice, these penalties must be effective, proportionate and deterrent.

7.19. Some in the trade have called for the Regulation to include guidelines for deciding between administrative and criminal penalties, for a degree of harmonization concerning the type of criminal penalties applied (imprisonment, fines, etc.) and for all Member States to make counterfeiting and pirating a specific customs offence.

7.20. As regards the calls concerning criminal penalties as such, Article 113 of the EC Treaty, the legal basis of the Regulation, is not an appropriate legal basis

7.21. As for administrative penalties, the Commission feels that they would not be useful in this case because they are not an alternative to criminal penalties, if only because Article 61 of the TRIPS Agreement requires contracting parties to introduce criminal penalties.

8. Conclusion

8.1. While the initial statistics are very encouraging and the improvements to the system set up under the previous Regulation (EEC) No 3842/86 mean that the system set up by Regulation (EC) No 3295/94 is operational, the system should nevertheless be updated to take account of developments in Community rules on intellectual property rights (the establishment of a Community trade mark) and customs given greater scope for action (extending the scope of the Regulation to protect patents and cover counterfeit or pirated goods whatever their customs status).

- 8.2. Such amendments will help step up action against fraud at the Community's external frontiers, ensure the effective and uniform application of Community rules and offer the Community's citizens and traders an equivalent level of protection throughout the Community customs territory, without detriment to the throughflow necessary for international trade. These objectives figure among those set out in Decision No 210/97/EC of the European Parliament and of the Council of 19 December 1996 adopting an action programme for customs in the Community (Customs 2000)⁹.
- 8.3. The Commission therefore proposes that Regulation (EC) No 3295/94 be amended in the manner set out in Annex 1 to this report.

⁹ OJ L 33, 4.2.1997, p. 24.

**Proposal for a
COUNCIL REGULATION (EC)**

**amending Regulation (EC) No 3295/94 laying down measures to prohibit
the release for free circulation, export, re-export or entry for a
suspensive procedure of counterfeit and pirated goods**

EXPLANATORY MEMORANDUM

Point 1 (Title)

As the proposal involves extending the scope of the Regulation, its current title is no longer correct and needs to be changed. More general wording should be used.

Point 2 (Article 1(1))

In order to improve the customs authorities' scope for action, they should be allowed to take advantage of the provisions of the Regulation either when the goods are placed in a free zone or warehouse or as soon as they are under customs supervision within the meaning of the Community Customs Code, i.e. on entry into the Community. This will enable the customs authorities to seize suspect goods, in accordance with the Regulation, when they are placed in temporary storage areas or facilities pending assignment to a customs-approved treatment or use (release for free circulation, export, etc.).

(Article 1(2)(a))

In the light of the experience gained by the customs authorities in their efforts to stem the flow of goods infringing copyright and related rights or design rights, the scope of the Regulation should now be extended to the protection of patents on products and of supplementary protection certificates for medicinal products and plant protection products. A new indent therefore needs to be inserted in this paragraph so as to extend the definition of counterfeit goods, for the purposes of this Regulation only, to include goods which infringe patents on products or supplementary protection certificates.

(Article 1(2)(c))

The aim of this amendment is to adapt the definition of the "holder of a right" to take account of the extension of the scope of the Regulation to cover protection for patents on products and for supplementary protection certificates for medicinal products and for plant protection products.

(Article 1(2)(e))

One of the aims of the proposal is to establish a simplified procedure which can be used to apply for action by holders of Community trade marks registered with the Office for Harmonisation in the Internal Market (trade marks, design rights) in Alicante. The aim of this new point is to define the "Community trade mark" by reference to the Regulation which introduced it.

(Article 1(2)(f))

To facilitate reading of the text, it must be specified that the term "certificate" used in the Regulation means supplementary protection certificates for medicinal products and for plant protection products.

(Article 1(3))

This amendment takes account of the extension of the Regulation's scope to the protection of patents on products and of supplementary protection certificates and indicates that moulds or matrices intended for the manufacture of goods which infringe a patent on a product or a supplementary protection certificate are also deemed to be counterfeit goods within the meaning of the Regulation.

(Article 1(4))

This amendment takes account of the extension of the Regulation's scope to the protection of patents on products and of supplementary protection certificates by specifying that the exclusion from its scope of parallel imports in particular also applies to goods covered by a patent on a product or by a supplementary protection certificate.

Point 3 (Article 2)

Goods found to be counterfeit or pirated cannot be marketed. Their entry into the Community, release for free circulation, export, re-export or entry for a suspensive procedure is therefore prohibited. In so far as the customs authorities are allowed to act when goods are placed in free zones and free warehouses, the placing of goods found to be counterfeit or pirated in such zones or warehouses should be prohibited.

Point 4 (Article 3(1))

Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark¹⁰ - fully operational since 1 April 1996 - has enabled natural and legal persons to obtain, by means of a single procedural system, Community trade marks which enjoy uniform protection and produce their effects throughout the entire area of the Community.

The conclusions in relation to the customs protection of such trade marks should now therefore be drawn and a simplified procedure for applying for action introduced. Under such a system, the holder of a Community trade mark should be able to make a single application for action, lodged in one Member State and valid in one or more Member States.

(Article 3(3))

Since Community-wide coverage is not systematically required and as fees have to be paid in some Member States, simplified applications for action (Community trade marks) need not automatically cover all Member States; applicants should be free to choose the Member State(s) in which protection is required. To facilitate applications relating to Community trade marks, standard forms should be introduced based on a specimen form laid down in a Commission implementing regulation.

¹⁰ OJ L 11, 14.1.1994, p. 1.

(Article 3(4))

The Member State in which the application for action is lodged may request the payment of a fee to cover the administrative costs arising from the processing of the application. In the case of a single application for action relating to Community trade marks, the Member States in which the application would apply (other than the one in which it was lodged) would no longer be able to charge fees despite incurring costs when putting the decision to take action into effect. Provision should therefore be made for the States concerned to charge a fee to the applicant or the applicant's representative so as to cover costs incurred in implementing a decision approved in another Member State. The fees must not in any case be disproportionate to the service provided.

(Article 3(5))

In the interests of simplification, decisions to take action relating to a Community trade mark which apply in several Member States should take effect for the same period of time in each Member State concerned. In order to take account of the variety of periods of validity which normally apply in the Member States, a compromise would be a period of one year, renewable once.

(Article 3(9))

To make the wording clearer, it should be specified that applications for extension should be treated the same way as the original application for action.

Point 5 (Article 5)

To avoid the lodging and processing of a single application for action in more than one Member State, the State in which the application was lodged should process it and then forward its decision to the competent authorities of the other Member States in which customs protection has been requested. Those States would then be bound by the original decision. However, the States concerned may suspend implementation of the decision until any fees or securities they require have been paid or lodged.

Point 6 (Article 7(2))

This amendment follows on logically from the extension of the scope of the Regulation to the protection of patents on products and of supplementary protection certificates, by specifying that, in certain circumstances, goods suspected of infringing a patent on a product or a supplementary protection certificate may be released or their detention revoked against provision of a security. It also specifies the terms for the release of such a security. These provisions correspond to an obligation laid down in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹¹.

¹¹ Annex 1 C; OJ L 336, 23.12.1994, p. 213.

Point 7 (Article 8(1))

This amendment follows on from the extension of the scope of the Regulation to the protection of patents on products and of supplementary protection certificates. It extends the rules already applicable to other counterfeit or pirated goods to goods infringing a patent on a product or a supplementary protection certificate.

Point 8 (Article 9(1))

The rules relating to compensation for the right holder in cases where counterfeit or pirated goods escape detection by a customs office, even though an application for customs protection was made, are a matter for the jurisdiction of the Member State in which that application was made. The aim of this amendment is to ensure that, in cases where applications for action relate to a Community trade mark and therefore apply in several Member States, the Member State in which the goods escaped detection by a customs office has jurisdiction in this respect.

(Article 9(2))

The laws relating to responsibility in the event of damage caused by the competent authorities in the course of action by them pursuant to this Regulation fall within the jurisdiction of the Member State in which the application was made. The aim of this amendment is to ensure that, in cases where applications for action relate to a Community trade mark and therefore apply in several Member States, the Member State in which the damage was caused has jurisdiction in this respect.

**Proposal for a
COUNCIL REGULATION (EC)**

**amending Regulation (EC) No 3295/94 laying down measures to prohibit
the release for free circulation, export, re-export or entry for a
suspensive procedure of counterfeit and pirated goods**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission¹²,

Having regard to the opinion of the European Parliament¹³,

Having regard to the opinion of the Economic and Social Committee¹⁴,

Whereas, pursuant to Article 15 of Council Regulation (EC) No 3295/94¹⁵, conclusions should be drawn from the experience gained during the early years of its implementation with a view to improving the operation of the system it set up;

Whereas the marketing of counterfeit goods infringing patents on products or, where they concern patents on products, supplementary protection certificates for medicinal products as provided for in Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products¹⁶, as amended by the Act of Accession of Austria, Finland and Sweden, or supplementary protection certificates for plant protection products, as provided for in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products¹⁷ causes serious injury to their holders and constitutes an unfair and unlawful business activity; whereas such goods should as far as possible be prevented from being placed on the market and measures should be adopted to that end to deal effectively with this unlawful activity without impeding the freedom of legitimate trade; whereas this objective is also being pursued through efforts being made along the same lines at international level;

Whereas, in order to guarantee the integrity of the Community's external frontier, the customs authorities should be permitted to take action against counterfeit, pirated and associated goods whatever their customs status; whereas the release for free circulation in the Community, entry for a suspensive procedure, re-export or placing in a free zone or free warehouse of such goods should therefore be prohibited; whereas moreover the customs authorities should be authorized to take action as soon as the said goods are brought into the Community;

¹² OJ

¹³ OJ

¹⁴ OJ

¹⁵ OJ L 341, 30.12.1994, p. 8.

¹⁶ OJ L 182, 2.7.1992, p. 1.

¹⁷ OJ L 198, 8.8.1996, p. 30.

Whereas, as regards suspensive procedures, free zones and free warehouses, re-export subject to notification and temporary storage, the customs authorities will act only where goods suspected to be counterfeit or pirated are discovered during a check;

Whereas Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark¹⁸, as amended by Regulation (EC) No 3288/94¹⁹, has established a system whereby right holders can, by means of a single procedure, obtain Community trade marks enjoying uniform protection and producing their effects throughout the Community;

Whereas to enhance the Community dimension of the said trade mark the administrative procedure for obtaining customs protection should be simplified;

Whereas trade mark holders should have access to a system whereby the granting of a single application for action by the competent authority in one Member State can bind one or more other Member States as well;

Whereas a single period of validity should be set in the interests of the uniform application of such decisions in the Member States concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 3295/94 is hereby amended as follows:

1. The title is replaced by the following:

“Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights”.

2. Article 1 is amended as follows:

(a) The second indent of paragraph 1(a) is replaced by the following:

“ found in the course of checks on goods under customs supervision within the meaning of Article 37 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code* placed under a suspensive procedure within the meaning of Article 84(1)(a) of that Regulation, re-exported subject to notification or placed in a free zone or free warehouse within the meaning of Article 166 thereof;

* OJ L 302, 19.10.1992, p. 1.”

¹⁸ OJ L 11, 14.1.1994, p. 1.

¹⁹ OJ L 349, 31.12.1994, p. 83.

(b) Paragraph 2 is amended as follows:

(i) a fourth indent is added to point (a) as follows:

“ goods infringing, in the Member State in which the application for action by the customs authorities is made, a patent on a product under the law of that Member State or a supplementary protection certificate as provided for by Council Regulation (EEC) No 1768/92^{**} or Council Regulation (EC) No 1610/96^{***};

^{**} OJ L 182, 2.7.1992, p. 1.

^{***} OJ L 198, 8.8.1996, p. 30.”

(ii) Point (c) is replaced by the following:

“(c) “holder of a right”: means the holder of a trade mark, a patent on a product or a certificate, as referred to in (a), and/or one of the rights referred to in (b), or any other person authorized to use that trade mark, patent on a product, certificate and/or right, or a representative thereof”.

(iii) The following points (e) and (f) are added:

“(e) “Community trade mark” means the trade mark defined in Article 1 of Regulation (EC) No 40/94^{****}”

(f) “certificate” means the supplementary protection certificate provided for by Regulation (EEC) No 1768/92 or by Regulation (EC) No 1610/96.”

^{****} OJ L 11, 14.1.1994, p. 1.”

(c) Paragraph 3 is replaced by the following:

“3. Any mould or matrix which is specifically designed or adapted for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark, of goods infringing a patent on a product or a certificate or of pirated goods shall be treated as 'counterfeit or pirated goods', as the case may be, provided that the use of such moulds or matrices infringes the rights of the holder of the right in question under Community law or the law of the Member State in which the application for action by the customs authorities is made.”

(d) The first subparagraph of paragraph 4 is replaced by the following:

“This Regulation shall not apply to goods which bear a trade mark with the consent of the holder of that trade mark or which are protected by a patent on a product or a certificate, copyright or related right or a design right and which have been manufactured with the consent of the holder of the right but are placed in one of the situations referred to in paragraph 1(a) without the latter's consent.”

3. Article 2 is replaced by the following:

"Article 2

The entry into the Community, release for free circulation, export, re-export, placing under a suspensive procedure or placing in a free zone or free warehouse of goods found to be counterfeit or pirated on completion of the procedure provided for in Article 6 shall be prohibited."

4. Article 3 is amended as follows:

- (a) The following text is added as the second subparagraph of paragraph 1:

"Where the applicant holds a Community trade mark, the application may seek action not only by the customs authorities of the Member State in which the application is lodged but by the customs authorities of one or more other Member States as well."

- (b) Paragraphs 3 and 4 are replaced by the following:

- "3. Save where the second subparagraph of paragraph 1 is applied, the application must specify the length of the period during which the customs authorities are requested to take action.

Applications under the second subparagraph of paragraph 1 shall indicate the Member State or States in which the customs authorities are requested to take action.

4. The applicant may be charged a fee to cover the administrative costs incurred in dealing with the application.

The applicant or his representative may also be charged a fee in each of the Member States where the decision granting the application is effective to cover the costs incurred in implementing the said decision.

Such fees shall not be disproportionate to the service provided."

- (c) The following third subparagraph shall be inserted into paragraph 5:

"Where an application is submitted under the second subparagraph of paragraph 1 the said period shall be set at one year, but may be extended for a further year, at the right holder's request, by the service which took the original decision".

- (d) The following paragraph 9 is added:

- "9. The provisions of paragraphs 1 to 8 shall apply *mutatis mutandis* to the extension of the decision on the original application."

5. Article 5 is replaced by the following:

"Article 5

1. The decision granting the application by the holder of the right shall be forwarded immediately to the customs offices of the Member State which are liable to be concerned with the goods alleged in the application to be counterfeit or pirated.
2. Where an application is submitted under the second subparagraph of Article 3(1), the first indent of Article 250 of Regulation (EEC) No 2913/92 shall apply *mutatis mutandis* to the decision granting the said application and the decisions extending or repealing it.

The service which adopted those decisions shall forward certified copies thereof to the relevant service of the customs authority in the Member State or States where the applicant has requested that action be taken.

The Member State or States so notified shall immediately acknowledge receipt of the decisions referred to in the first subparagraph.

The period referred to in the third subparagraph of Article 3(5) shall run from the date on which the decision granting the application was adopted. The Member States to which the said decision is addressed may suspend implementation until the fee referred to in the second subparagraph of Article 3(4) has been paid and the security referred to in Article 3(6) has been provided."

6. Article 7(2) is replaced by the following:

"2 In the case of goods suspected of infringing patents on products, certificates or design rights, the owner, the importer or the consignee of the goods shall be able to have the goods in question released or their detention revoked against provision of a security, provided that:

- the customs service or office referred to in Article 6(1) has been informed, within the time limit referred to in paragraph 1, that the matter has been referred to the authority competent to take a substantive decision referred to in the aforesaid paragraph 1,
- on expiry of the time limit, the authority empowered for this purpose has not imposed interim measures, and
- all the customs formalities have been completed.

The security must be sufficient to protect the interests of the holder of the right. Payment of the security shall be without prejudice to the other remedies open to the holder of the right. Where the matter has been referred to the authority competent to take a substantive decision other than on the initiative of the holder of the patent on a product, certificate or design right, the security shall be released if that person does not exercise his right to institute legal proceedings within 20 working days of the date on which he is notified of the suspension of release or detention. Where the second subparagraph of paragraph 1 applies, this period may be extended to a maximum of 30 working days."

7. The introductory wording of Article 8(1) is replaced by the following:

"Without prejudice to the other forms of legal recourse open to the right holder, Member States shall adopt the measures necessary to allow the competent authorities."

8. In Article 9, paragraphs 1 and 2 are replaced by the following:

- “1. Save as provided by the law of the Member State in which an application in accordance with Article 3(2) is lodged or, in the case of an application under the second subparagraph of Article 3(1), in which counterfeit or pirated goods escape detection by a customs office, the acceptance of an application shall not entitle the holder of a right to compensation where such goods are not detected by a customs office and are released or no action is taken to detain them in accordance with Article 6(1).
2. Save as provided by the law of the Member State in which the application is made or, in the case of an application under the second subparagraph of Article 3(1), in which loss or damage is incurred, exercise by a customs office or by another duly empowered authority of the powers conferred on them in regard to combating counterfeit or pirated goods shall not render them liable to the persons involved in the operations referred to in Article 1(1)(a) or Article 4, in the event of their suffering loss or damage as a result of their action.”

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX II

Number of cases since 1 July 1995

Member State	Latter half of 1995	First half of 1996	Latter half of 1996	First half of 1997	TOTAL
Belgium	17	28	40	42	127
Denmark	39 inc. 34 P and 0 T	23 inc. 17 P and 5 T	48 inc. 18 P and 4 T	29	139 inc. 69 P and 9 T
Germany	214 inc. 11 P	432 inc. 34 P	541 inc. 20 P	657 inc. 12 P and 347 T	1 844 inc. 77 P and 347 T
Spain	12 inc. 2 P and 2 T	61 inc. 0 P and 10 T	219 inc. 0 P and 127 T	167 inc. 0 P and 104 T	459 inc. 2 P and 243 T
France	196 inc. 7 P and 159 T	86 inc. 4 P and 23 T	105 inc. 0 P and 23 T	140 inc. 11 P and 60 T	527 inc. 22 P and 265 T
Ireland	0	0	3	0	3
Italy	5	21	18	27	71
Luxembourg	0	8	6	4	18
The Netherlands	NC	117 inc. 26 P and 54 T	135 inc. 40 P and 61 T	138 inc. 63 P and 46 T	390 inc. 129 P and 161 T
Finland	0	1	16	46 inc. 1 P and 12 T	63 inc. 1 P and 12 T
Sweden	0	0	0	5	5
United Kingdom	65	137	108	177	487
TOTAL	548 inc. 54 P and 161 T	914 inc. 81 P and 92 T	1 239 inc. 78 P and 215 T	1 432 inc. 87 P and 569 T	4 133 inc. 300 P and 1 037 T

NC = Not communicated
P = Postal consignments
T = Travellers' baggage

Number of cases by type of goods concerned since 1 July 1995

Type of goods	BE	DK	DE	ES	FR	IR	IT	LU	NL	FI	SV	UK	Total
Clothing	51	119	1 215	123	305	1	24	1	195	44	5	330	2 413
Footwear	4	0	52	26	20	0	4	0	5	9	0	0	120
Watches	12	6	79	234	99	0	1	1	49	0	0	25	506
Audio cassettes	0	0	122	1	1	0	0	0	3	0	0	0	127
Logos, pendants, badges, emblems, labels, stickers	1	0	13	2	3	0	4	0	12	2	0	33	70
Bags	5	0	13	2	13	1	1	0	11	3	0	8	57
Motor vehicle parts	0	0	18	0	4	0	1	0	0	0	0	0	23
Sunglasses	5	2	5	9	19	0	0	0	6	1	0	1	48
Toys	3	1	47	4	9	0	6	0	0	1	0	8	79
Caps	12	0	56	34	19	1	2	0	22	1	0	8	155
Video games	6	15	34	3	0	0	10	0	2	2	0	1	73
Micro-processors	2	0	8	0	0	0	0	0	12	0	0	3	25
CDs	3	10	8	0	0	1	8	16	22	1	0	10	79
Video cassettes	2	1	15	1	0	1	0	0	1	0	0	0	21

BRIEF OVERVIEW

1. 4 133 cases were reported during the period in question (July 1995-June 1997)

1 844	⇒	DE	⇒	(44.6%)
527	⇒	FR	⇒	(12.7%)
487	⇒	UK	⇒	(11.7%)
459	⇒	ES	⇒	(11.1%)
390	⇒	NL	⇒	(9.4%)
139	⇒	DK	⇒	(3.3%)
127	⇒	BE	⇒	(3%)
71	⇒	IT	⇒	(1.7%)
63	⇒	FI	⇒	(1.5%)
18	⇒	LU		
5	⇒	SV		
3	⇒	IR		

2. Type of trafficking

Of the 4 133 cases:

300	⇒	postal consignments (7.2%)
1 037	⇒	travellers' baggage (25%)

3. Type of products

Of the 4 133 cases:

2 413	⇒	clothing (mainly T-shirts, shirts, jeans and sportswear) (58.3%)
506	⇒	watches (12.2%)
155	⇒	caps (3.7%)
127	⇒	music cassettes (3%)
120	⇒	footwear (2.9%)

NB:

- * 70 cases involved trade mark symbols (logos, labels, sticker, badges, etc.) (an innovation of Regulation (EC) No 3295/94). Most involved considerable quantities. For instance, seizures in the UK included:
 - 20 400 "Lacoste" logos (7 May 1996)
 - 24 500 "Versace" logos (6 December 1995)
 - 60 000 "Nike", "Ralph Lauren" and "Yves Saint-Laurent" labels from Pakistan (17 October 1996)
 - 75 000 "Levi's" logos, buttons and rivets (5 October 1995)
 - 75 000 "Ralph Lauren" and "Yves St-Laurent" labels from Turkey (14 March 1997)
 - 79 900 "Calvin Klein", "Timberland Ltd", "Kickers" and "Ellesse" labels from Pakistan (15 January 1997).
- * 79 cases involved toys (mainly scale models, balls, cuddly toys etc.).

4. Noteworthy cases

- * 800 000 "Bic" pens (15 November 1996, Belgium)
- * 483 000 "Clipper Flamagas" lighters from Hong Kong (27 May 1997, Spain)
- * 150 000 "Bic" pens from Hong Kong (12 February 1997, France)
- * 144 000 "Christian Dior" shirts (September 1996, Belgium)
- * More than 140 000 CDs have been seized in Luxembourg
- * 135 000 "Disney" badges from China (26 March 1997, France)
- * 129 000 caps counterfeiting a number of sports firms (6 May 1996, Belgium)
- * 100 000 "Christian Dior" shirts destined for Russia (12 November 1996, Finland)
- * 87 000 "Disney" scarves from Korea (22 July 1996, France)
- * 60 000 "Bugs Bunny" and "Tweety Pie" key-rings ("Warner Bros") from China (26 September 1996, Germany)
- * 65 000 teddy bears from China (1 October 1996, France)
- * 60 000 "Armani" shirts destined for Russia (23 January 1997, Finland)
- * 58 000 "Nike", "Armani", "W. Bros", "Disney", "Adidas", "Boy London", "Casio", "Levi's", "Guess", "Coca" and "Ralph Lauren" watches from Hong Kong (21 January 1997, France)
- * 55 000 "Walt Disney" cotton ensembles from China (29 April 1997, Spain)
- * 50 000 litres of "Newman" toilet water from Algeria (24 June 1996, France)
- * 58 000 "Nokia", "Coca Cola", "Marlboro" and "Motorola" lighters from China (final quarter of 1996, Netherlands)
- * 42 000 "Versace" women's shoes destined for Russia (2 February 1997, Finland)
- * 41 000 "Armani" shirts destined for Russia (14 January 1997, Finland)
- * 37 000 "Nintendo" video games from Japan (date not reported, Netherlands)
- * 34 000 "Tweety" key-rings from China (second quarter of 1997, Netherlands)
- * 34 000 "Michael Jordan" sports shoes destined for Russia (14 March 1997, Finland)
- * 33 000 "Smurf" garden gnomes from China destined for France (11 April 1997, Belgium)
- * 33 000 "Reebok" sports shoes destined for Russia (3 January 1997, Finland)
- * 33 000 pairs of "Calvin Klein" underwear from the USA (24 July 1996, Spain)
- * 32 000 "Nintendo" video games destined for Russia (21 February 1997, Finland)
- * 30 000 pairs of "Dunlop" socks from Turkey (25 January 1996, Germany)
- * 28 000 footballs from Pakistan (10 November 1996, Germany)
- * 27 000 CDs from Israel (first quarter of 1996, Italy)
- * 25 000 "Levi Strauss" and "Calvin Klein" jeans from China (15 November 1996, Italy)
- * 24 000 CDs from the Czech Republic (22 April 1997, Luxembourg)
- * 22 000 "Mattel" watches from Hong Kong (23 December 1996, France)
- * 22 000 "Walt Disney" rings from South Korea destined for Poland (26 May 1997, Germany)
- * 21 000 pairs of "Levi's" (23 August 1996, Belgium)
- * 21 000 "Happy Baron" pans (14 containers) (July 1996, Belgium)
- * 21 000 "Nintendo" video games from Hong Kong (January 1996, Belgium)
- * 20 000 watches and 10 000 caps ("Nike", "Fila" et "Boy London") from the USA (June 1996, Belgium)
- * 20 000 T-shirts (various brands) from Thailand (June 1996, Belgium)

- * 20 000 "Lewis" and "Diesel" sweatshirts (6 November 1996, Belgium)
- * 19 000 "Walt Disney" balls from the Czech Republic on 13 February 1996 and 15 000 more on 24 September 1996 (Germany)
- * 19 000 "Peugeot" motor vehicle parts from Taiwan (29 March 1996, France)
- * 18 000 pairs of "Levi's" jeans (30 April 1996, Belgium)
- * 16 700 "Walt Disney" balls from Taiwan (21 May 1996, Spain)
- * 16 000 "Nintendo" video games (6 November 1996, Belgium)
- * 16 000 "FC Bayern" footballs from Pakistan (11 November 1996, Germany)
- * 15 000 pairs of "Calvin Klein" jeans and 3000 shirts destined for Russia (24 January 1997, Finland)
- * 15 000 pairs of "Ray Ban" sunglasses from China (15 February 1996, France)
- * 15 000 pairs of "Ray Ban", "Sting" and "Police" sunglasses from China (April 1996, Belgium)
- * 15 containers of pottery "Walt Disney" characters from China destined for France (April-May 1997, Belgium)
- * 8 cases in Germany involved garden gnomes (175 items) (copyright or design rights, depending on the case)
- * 3 cases in Germany involved 2 200 litres of vodka from Latvia.

5. The customs procedures and intellectual property rights concerned

NB:

Such figures are available only for Italy from 1 July 1995, Germany, France and Ireland from 1 January 1996, Belgium from 1 January 1997 and Denmark, Spain and Finland from 1 April 1997.

Of the 2 165 cases concerned:

- 1 517 ⇨ release for free circulation (70%)
- 383 ⇨ unlawful import (17.6%)
- 190 ⇨ re-export (8.7%)
- 64 ⇨ placing under a suspensive procedure (2.9%)
- 6 ⇨ export (0.2%)
- 1 962 ⇨ trade marks (90.6%)
- 206 ⇨ copyright and related rights (9.5%)
- 126 ⇨ design rights (5.8%)

6. Source of the counterfeit goods

Of the 4 133 cases:

740	⇒	Poland	⇒	(17.9%)
724	⇒	Thailand	⇒	(17.5%)
497	⇒	Turkey	⇒	(12%)
438	⇒	USA	⇒	(10.5%)
243	⇒	Hong Kong	⇒	(5.8%)
195	⇒	China	⇒	(4.7%)
151	⇒	Czech Republic	⇒	(3.6%)
98	⇒	South Korea	⇒	(2.3%)
53	⇒	Indonesia	⇒	(1.2%)
46	⇒	Taiwan	⇒	(1.1%)

NB:

- In Germany most cases involved products arriving from Poland, Turkey and the Czech Republic.
- In Spain most cases involved products arriving from the United States.

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