



Intellectual property rights (IPR)

In this information sheet Customs answers the following questions about intellectual property rights (IPR)

In this information sheet

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Introduction

Infringements of intellectual property rights (IP rights), such as counterfeiting and piracy have an international dimension. Since 1 January 2014 Customs Administration of the Netherlands has operated according to the new [Regulation 608/2013](#).

The following questions and answers briefly cover relevant aspects of IP rights.

1 How does Customs combat infringement of IP rights?

When carrying out customs controls Customs may come across goods that appear to infringe certain IP rights. Customs operates the procedures under [Regulation 608/2013](#) and plays a facilitating role. The right-holder is then given the opportunity (within a set time period) to establish whether the goods infringe his IP rights and whether he wishes to take action against the infringement.

If you believe that your IP rights are being or will be infringed in the Netherlands or another EU Member State you can apply to Customs to take action against the infringement (application for action). If Customs approves your application and comes across these goods during a custom control, Customs will detain the goods. You will receive a notification so that you can check whether your rights have been infringed and take any necessary action.

It is also possible for Customs to establish a possible infringement of IP rights during a customs control without the right-holder having made a request beforehand (ex officio action). In that case Customs will contact the right-holder, who can then submit an application and take measures to protect his rights.

2 For which IP rights does Customs take action?

Regulation 608/2013 is applicable to the following IP rights:

- trademark rights
- designs and models rights
- copyrights
- related rights
- patent rights
- supplementary protection certificate
- plant variety rights
- designations of origin or geographical indications
- geographical designations
- trade names
- utility model
- topography of semiconductor products

Regulation 608/2013 is not applicable to:

- IP rights not stated in the regulation
- goods not originating from third countries (Community goods)
- goods manufactured under conditions other than those agreed with the right-holder
- parallel trade and overruns
- passenger luggage
- goods released for free circulation under the customs end-use regime

Regulation 2017/1001 regarding Union Trade mark.

3 How should you submit a 'request for Customs action'?

The right-holder can apply to Customs to take action if he believes that his IP right is being infringed. This can be done by submitting a form 'application for action' to Team IPR. (Address-details see chapter 11).

An application has a maximum term of validity of one year, but this can be extended. If an application is approved the right-holder is designated from then on as the 'holder of the decision'.

The IPR Team processes the application and gives the submitting party its written decision within 30 days of its receipt.

What does 'ex officio customs action' mean?

When carrying out customs controls Customs may come across goods that may be infringing rights but for which no application for action has been made. Customs can also suspend the release of these goods, or detain them. We refer to this as 'ex officio Customs action'.

The IPR-team will try to identify the right-holder so that it can submit an application for customs action. The IPR-team also informs the declarant or the holder of the goods. This notification represents the beginning of the suspension of release or detention of the goods and is when the time periods start.

Submission of application within 4 working days

The right-holder must submit an application to the IPR-team within 4 working days of receiving the notification. The IPR-team informs the party who submitted the application whether it has been accepted or rejected within 2 working days. If the application is accepted the IPR-team also informs the declarant or the holder of the goods as such. If the application is rejected the goods are released.

No ex officio Customs action for perishable goods

There is no ex officio procedure for perishable goods. If Customs comes across perishable goods that are suspected of infringing an IP right but for which no application for customs action has been issued, the release of these goods is not suspended. For cases concerning the possible infringement of an IP right relating to perishable goods, the right-holder must always have submitted an application for customs action in advance.

4 How does the Customs action procedure work?

In cases where Customs suspends the release of or detains goods that are suspected of infringing rights, a notification will be sent to the holder of the decision. The declarant or holder of the goods is also informed of this. Customs provides information about the goods in this notification.

The holder of the decision must respond within 10 working days

The 10 working days period begins on the date of the notification. The holder of the decision must respond in writing to the IPR Team within this period. Perishable goods are subject to a period of 3 working days. The holder of the decision indicates in his response that:

- 1 an IP right is being infringed, and
- 2 that he approves the destruction of the goods.

If this response is not received within 10 working days or does not meet both conditions, Customs will release the goods.

The declarant or the holder of the goods must respond within 10 working days.

The declarant or the holder of the goods can make the following responses to the IPR-team within the 10 working day period:

- a approval for the destruction of the goods or
- b no response within the period or
- c objection to destruction.

Situation a: In this situation the declarant or the holder of the goods approves their destruction. In that case the holder of the decision and the declarant or holder must make agreements on and arrangements for the destruction of the goods.

Situation b: If the declarant or holder of the goods fails to respond to the IPR-team within the 10 working day period, this will be taken as approval for the destruction of the goods suspected of infringing rights. Other than that, the situation under a. applies.

Situation c: If the declarant or the holder of the goods states that he does not approve their destruction or has other objections, the holder of the decision must initiate civil court proceedings within this time period. The holder of the decision can make a justified request to the IPR-team to extend the period by a maximum of 10 working days.

Please note!

It is compulsory to initiate legal proceedings in situation c. More information is given in 'obligations' section.

Small amounts / Threshold amounts

Is your IP rights being infringed, but you do not act when it comes to smaller amounts? Then we only report when it concerns larger quantities. For this we record a minimum amount at which you will act. We do not register a minimum quantity when it comes to the 'small consignments procedure'. The rightholder can always act against small quantities of infringing goods in postal and courier shipments.

Duration and size of registrations

The specified threshold amounts apply as long as the decision for customs action lasts. The 'holder of the decision' can adjust this amount if the decision is extended.

Does the 'holder of the decision' not act on quantities above the threshold? Then we no longer cooperate in the protection of the IP rights of the 'holder of the decision'.

5 What is the procedure for inspecting and analyzing samples of the goods?

You must make a request to the IPR-team for the inspection of the goods or to obtain a sample. The holder of the decision can inspect the goods if the request is approved. Samples can only be provided in the case of counterfeit goods or goods obtained through piracy. You must return the samples to Customs afterwards.

6 How does the 'small consignments procedure' work in the Netherlands?

General

Regarding postal and courier shipments (when the conditions are met) the small consignments procedure can be followed instead of the normal procedure. Small procedure is described in Article 26 Regulation 608/2013.

The small consignments procedure is different in some parts from the normal procedure for infringing goods. The small consignments procedure is intended to reduce work, time and money for both the holder of the decision and Customs. This to manage the massive process on postal and courier shipments.

Differences with the normal procedure:

- Customs will arrange the destruction of the infringing goods.
- The holder of the decision is not involved in the conduct of that procedure unless objections to the destruction by Customs were made.
- The use of the small consignments procedure has its own conditions.

Conditions small consignments procedure

- 1 Goods transported as 'small consignments' in postal and courier shipments
- 2 Only regarding counterfeit and pirated goods
- 3 Not applicable for perishable goods
- 4 An application for customs action where the application small consignments procedure has been requested and granted.

Definition small consignment?

The definition is:

- 3 units per holder
- or
- 2 kg is an absolute gross weight limit for whole consignment regardless of the amount of [infringing] goods.

Procedure

Customs informs the declarant

The declarant will be informed of the suspension of the release within one working day following the suspension of the release or after the detention of the goods.

Customs states:

- that Customs intend to destroy the infringing goods
- the rights of the declarant or holder of the goods
- the principle that within ten working days of notification of the suspension of the release of the goods or detain them, can express his point of view (Regulation, Article 26, paragraph 4).

Agreement to the destruction

Destroying through Customs depends on the response of the declarant or the holder of the goods.

If the declarant or holder of the goods has confirmed his agreement to the destruction of the goods, Customs will arrange the destruction of the goods.

Presumed to be accepted/deemed agreement

Where the declarant or the holder of the goods has not confirmed his agreement to the destruction of the goods nor notified his opposition to the customs authorities, within the 10 working days period, the customs authorities may deem the declarant or the holder of the goods to have confirmed his agreement to the destruction of the goods (Regulation, Article 26, paragraph 6).

Objections to destruction / no destruction by Customs

If the declarant or the holder of the goods notifies Customs of his opposition to the destruction of the goods. Customs will notify the holder of the decision accordingly to Regulation 608/2013. The next phase will take effect in the small consignments procedure, the holder of the decision must initiate proceedings.

Team IPR provides information of the quantity of goods and their nature, including images thereof, when appropriate. The customs authorities shall also, upon request and where available to them, inform the holder of the decision of the names and addresses of the consignee, the consignor and the declarant or the holder of the goods, of the customs procedure and of the origin, provenance and destination of the goods.

Initiating proceedings by the holder of the decision

The holder of the decision will be informed by Team IPR and must initiate proceedings ' to determine whether there is an infringement of an intellectual property right' within 10 days. Regarding the regulation it must be a judicial procedure. The release continues (as in a normal article 23 procedure) to be suspended during the procedure.

Release of goods

The Customs shall grant the release of the goods when they have not received information that the holder of the decision has initiated proceedings. (Regulation, Article 26, paragraph 9).

Destruction by Customs in postal and courier shipments

The situation in the small consignments procedure is different from the normal procedure.

- In the normal procedure, the holder of the decision destroys the infringing goods (or destroyed by one another but not by the Customs).
- In the small consignments procedure Customs will arrange the destruction of the infringing goods.

Regarding postal and courier shipments all infringing goods which are not eligible for release, Customs will arrange the destruction.

7 Travellers' personal luggage

The Regulation 608/2013 shall not apply to goods of a non-commercial nature contained in travellers' personal luggage.

8 Release of goods under guarantee

Goods suspected of infringing the following IP rights can be released by Customs under certain conditions. The rights in question are:

- designs and models rights
- patent rights
- plant variety rights
- utility model
- topography of semiconductors

Customs releases the goods or ends their detention once the following conditions have been met:

- the declarant or the holder of the goods has issued a guarantee sufficient to protect the interests of the holder of the decision
- customs formalities have been fulfilled

9 What are the obligations of the holder of the decision?

As the holder of the decision on Customs action, you have the following obligations.

- 5 You may use the information received only for purposes provided for in Regulation 608/2013
- 6 You must fulfil notification obligations towards Customs
- 7 You must return any samples
- 8 You must pay any costs
- 9 You must state a valid reason if you do not initiate civil proceedings

Sanctions imposed on the holder of the decision

The holder of the decision has various obligations. If a holder of the decision fails to fulfil one of these obligations, Customs may impose a sanction (Regulation, Article 16). Customs may revoke or suspend the decision for customs action.

10 How is liability for costs and damages arranged?

The holder of the decision is liable for all costs and losses resulting from the detention or suspension of the release of goods.

11 Address details of the IPR Team and more information

More information is given in the more detailed background information Intellectual property rights (IP rights).

No rights can be derived from this text and the information sheet. Only the text of [Regulation 608/2013](#) applies, which you will find here. More information on this subject is also given on the [website of the European Commission](#).

You can address your response, request for more information or questions to:

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