



The enforcement of Geographical Indications

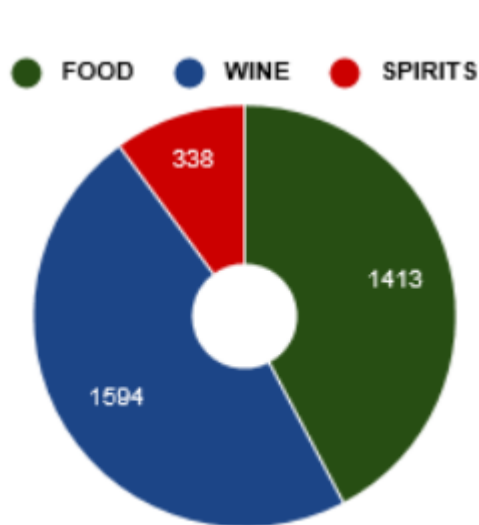
Massimo Antonelli
European Observatory on infringements of IPR
Alicante – 30.10.2018
www.ipkey.eu



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- 1 Economic impact of fake GIs in the EU
 - 2 The EU rules to protect GIs
 - 3 The national enforcement of GIs
 - 4 Border protection of GIs and the role of Customs
 - 5 Enforcement of GIs and exchange of information

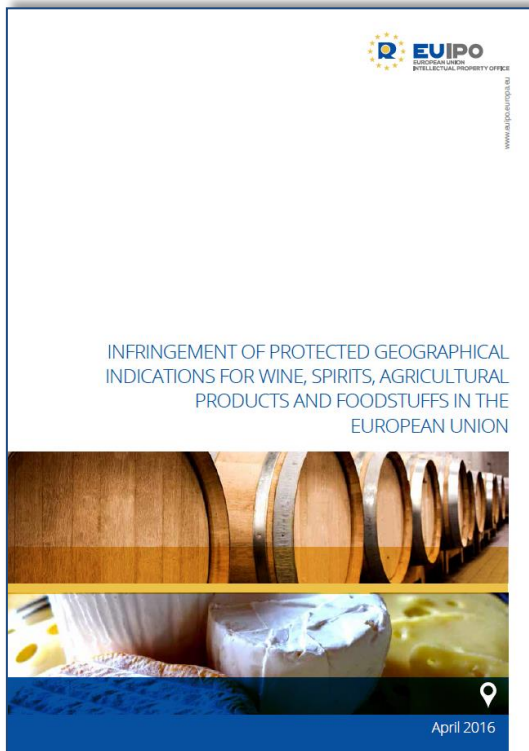


1 ECONOMIC IMPACT OF FAKE GIs IN THE EU



GI	Registered
PDO	1781
PGI	1167
TSG	59
GI SPIRITS	338
total	3345

Source: QUALIGEO.EU, the food, wine and spirits GI database
<https://www.qualigeo.eu>



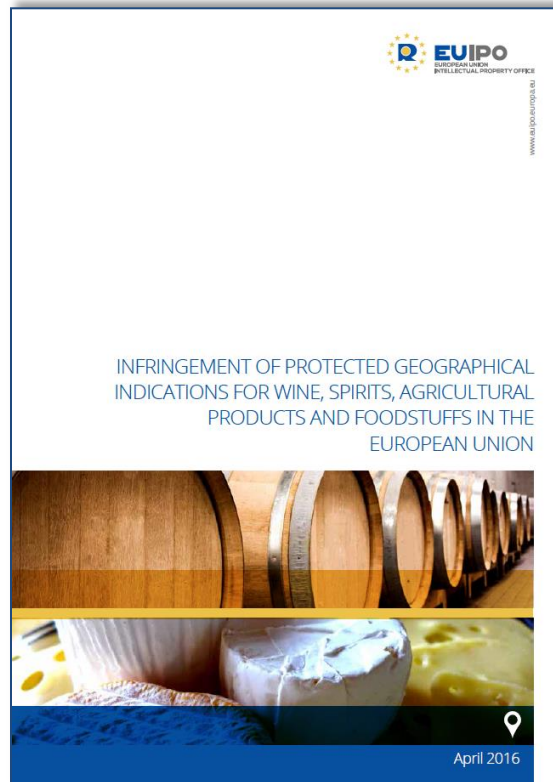
«INFRINGEMENTS OF GEOGRAPHICAL INDICATIONS»

Value of GI infringing products (2014)

VALUE (€billion)	% OF GI PRODUCT MARKET
4.3	9.0%

Data from 17 MS representing approximately
82% of the EU GI product market



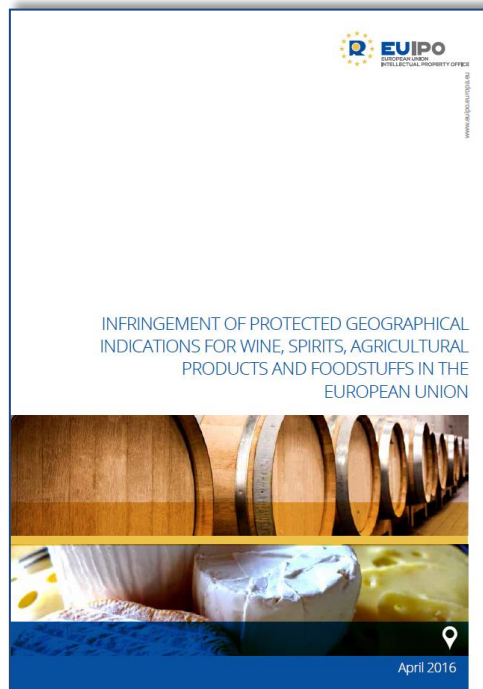


«INFRINGEMENTS OF GEOGRAPHICAL INDICATIONS»

Infringement rates vary considerably by GI product

12.7%	SPIRITS
11.5%	FRUITS, VEGETABLES AND CEREALS
11.0%	FRESH MEAT AND MEAT PRODUCTS
10.6%	CHEESES
8.6%	WINES
0.1%	BEERS





«INFRINGEMENTS OF GEOGRAPHICAL INDICATIONS»

impact on spirits and wines sector
2012-2015

DIRECT LOST SALES (€billion)	% OF SALES	TOTAL LOST SALES (€billion)	DIRECT EMPLOYM ENT LOSS	TOTAL EMPLOYM ENT LOSS	GOV. REVENUE LOSS (€billion)
2.7	6.9%	6.3	7,100	41,000	2.2

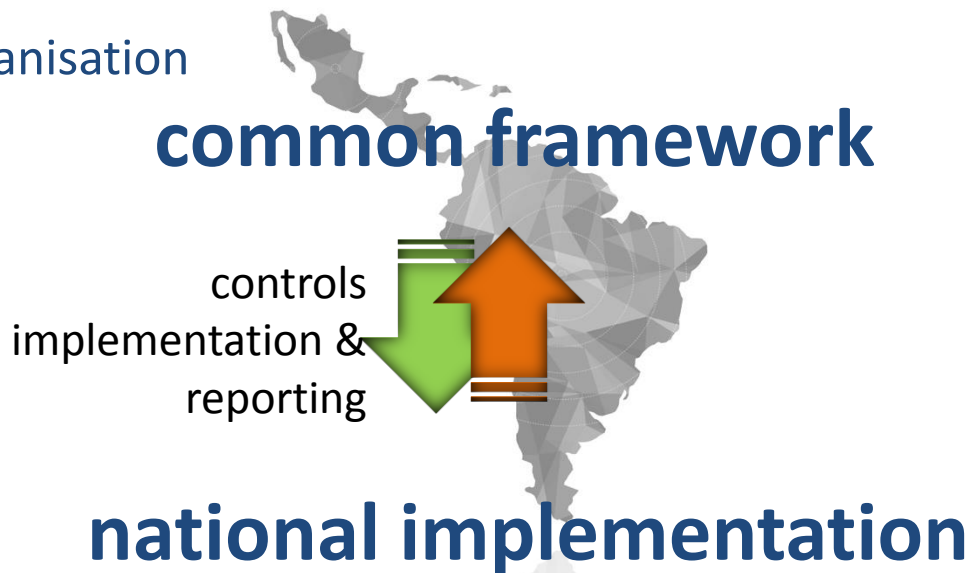


2 THE EU RULES TO PROTECT GIs

- Approach to protection
 - **GI as «sui generis» IP rights**
 - EU/national collective marks or national certification/guarantee marks
 - under other legal framework (e.g.: competition laws, consumers protection, etc.)



- 2 level organisation



- Protected products: foodstuff and agricultural, wines, spirits and aromatised wine drinks
- **EU products and GI protected products from third Countries**
 - upon registration in the EU – special scheme provided
 - based on bilateral/multilateral agreements



- Scope of the protection
 - any direct or indirect commercial use of the registered name
 - any misuse, imitation or evocation
 - any other false or misleading indication as to the origin, provenance, nature or essential qualities
 - any other practice liable to mislead the consumer as to the origin of the product



- Scope of the protection

- «Ex officio» measures: a qualifying tool

Member States shall take **appropriate** administrative and judicial steps to prevent or stop the unlawful use of the name of **products that are produced or marketed in the State**



- open category of measures
- independently of prior claims
- support to small producers
- **for all GI products across the EU**

- controllers National central authority

designated competent authorities (CA)

- impartial and objective
- qualified staff
- necessary resources

delegated control bodies (CB)

- usually private entities
- operating as certification bodies
- ISO/IEC 17065:2012
- only on production



- Control bodies – Spanish practice: the **Consejos Reguladores**

Example in Aragon (Law No 9/2006):

- Public corporation with autonomous legal status and finance
- Tasks
 - administration
 - proposal of minimum requirements for each associated producer
 - **can act as control body (ISO/IEC 17065:2012 compliant):**
 - via a control structure integrated in the Consejo
 - the Consejo itself upon authorisation of the Community
 - under the Community's supervision (incompliances and control of legality of acts)



- Control bodies – Italian practice: the **Consorzio di produzione**

Administrative entity created by the producers – legal framework in the civil code

- common organisation of enterprises
- composition:
 - representation
 - rules against conflicts of interest
- tasks include **special surveillance on the market through the “agenti vigilatori”**
 - production-transformation-trade, at all levels
 - can act as “public security agents”
 - directly supporting the national control authority – *ex officio* protection



- Official controls

- it's a **voluntary** system of control on all operators in the group of producers
- **compulsory** for all operators once they use the name
- based on a national plan of controls shared with the Commission



- Official controls

PRODUCTION

- **Technical compliance with product specifications**
- usually upon a plan agreed with the g.o.p.
- costs

MARKET

- **Surveillance of the use of the name**
- risk analysis based/systematic
- in the whole supply chain

Methodology:
sampling

analytic and/or organoleptic tests

3 THE NATIONAL ENFORCEMENT OF GIs

- A good enforcement largely depends on an equivalent level of protection ensured across all the territory of the Union
- ☐ Different approaches in MSs to high quality food products for historical and traditional reasons
- ☐ Different economic weight of GI in MSs

Need to monitor...

- 2017: EUIPO's Study on national enforcement

The scope:

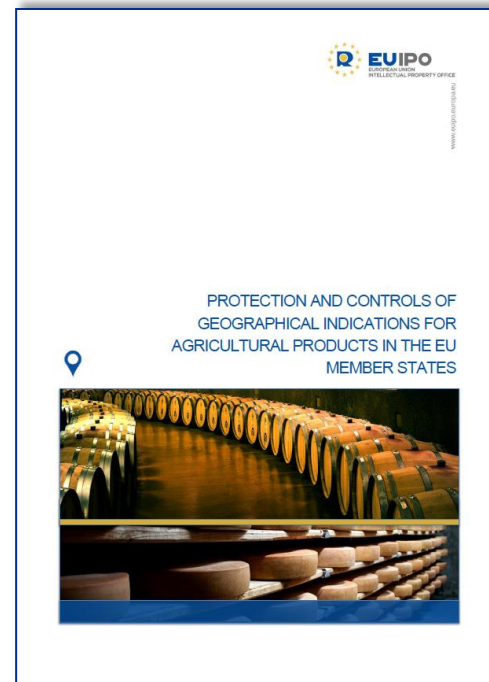
- ☐ 4 product categories
- ☐ IP: strictly GI in the TRIPP definition
- ☐ infringements

The structure:

- ☐ Inventory of organisations and procedures
- ☐ Practical Guide: contact data for networking and information on legal redresses

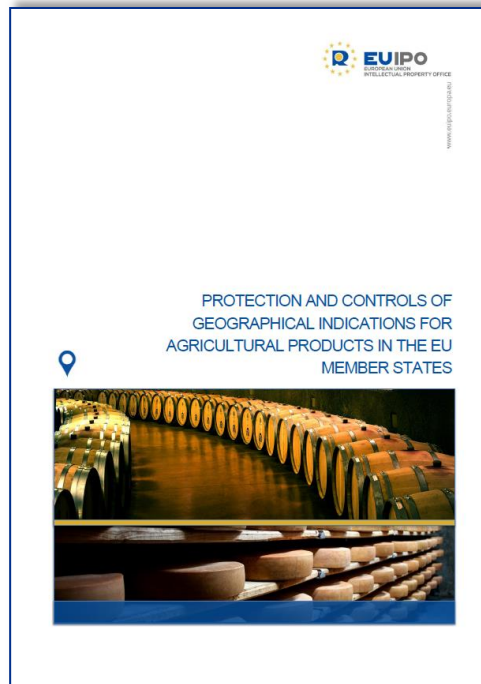
The methodology:

- ☐ data collection from Member States
- ☐ open sources and field research



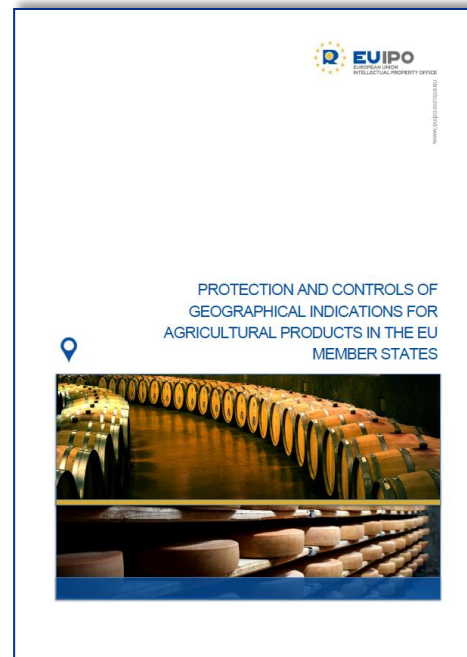
- 2017: EUIPO's Study on national enforcement

- ❑ National systems are diverse
- ❑ Procedures and resources not always specifically for GI - general food controls apply
- ❑ Criminal Law
 - **majority with specific GI criminal provisions**
 - other covered by IP crime law
- ❑ Civil law remedies
 - trade mark law
 - unfair competition
 - consumer protection



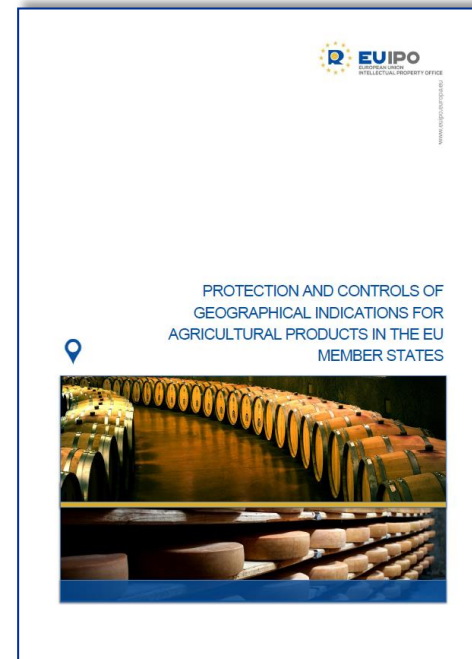
- 2017: EUIPO's Study on national enforcement

- ❑ «Ex officio» protection, a weak point
- ❑ ...but some have very good practices
 - Italy, France, Germany, Spain, Latvia, Croatia, Poland, Romania, Hungary bigger respondents
 - Italy best practices:
 - central c.a. ICQRF legally designated for ex officio measures
 - MoUs with e-commerce platforms eBay, Alibaba and Amazon – take down of listing – very quick reply after request

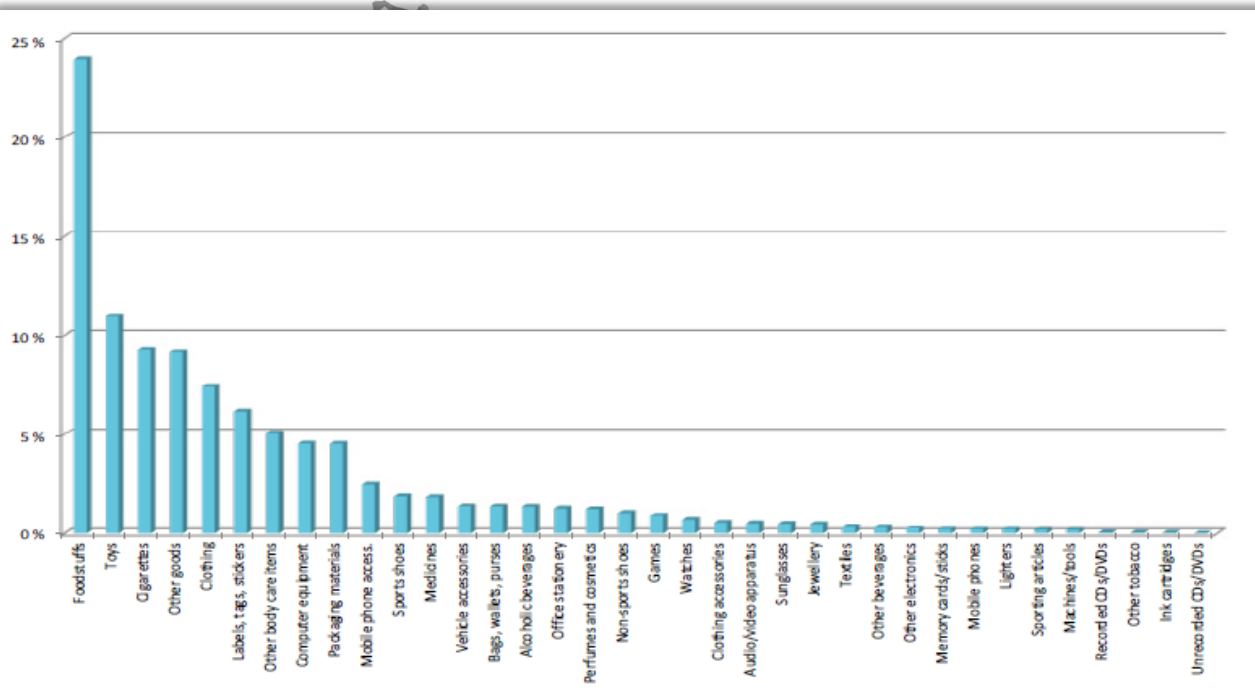


4 BORDER PROTECTION OF GIs AND ROLE OF CUSTOMS

- 2017: EUIPO's Study on national enforcement
 - ❑ What is the real involvement of law enforcement authorities (Police and Customs) on GIs?
 - ❑ Customs: is there a sufficient protection at the borders?

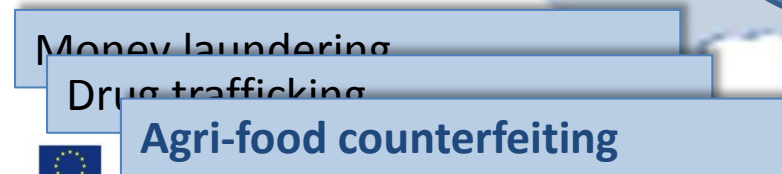


❑ Fake food products in international trade is a reality



Source: DG TAXUD Report on EU customs enforcement of IPR – results at the EU border 2017

26 January 2017: The Italian Prosecutor Office of Reggio Calabria (Anti-Mafia District Directorate) announces an operation (including collaboration of Italian Customs) against Organized Criminal Group with basis in Italy and connections with the USA



The criminal activities included illegal import-export operations of olive oil and agricultural products:

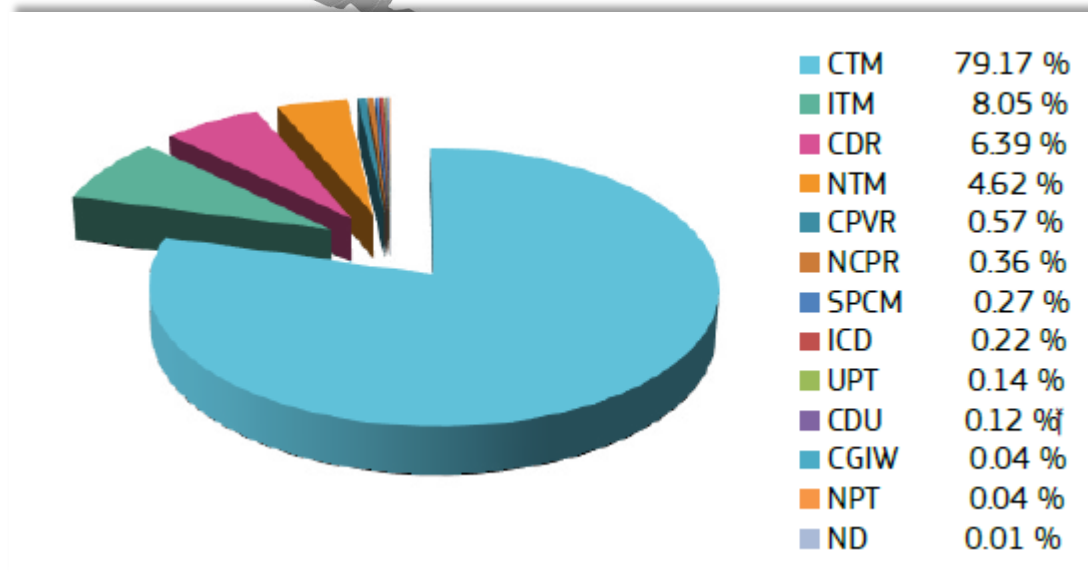
- influencing the regional agri-food production
- establishing a network for export to USA of counterfeited olive oil
- US commercial and retail network infiltrated with illegal Italian olive oil products
- and much more...



46 million euro seized at the time of the operation

EU Customs role in IPR enforcement

- ❑ IPR holders proactive role: an «application for action» needed **with all info**
- ❑ IP rights in % of articles seized in 2017: **0,04% of GI**



Source: DG TAXUD Report on EU customs enforcement of IPR – results at the EU border 2017

5 ENFORCEMENT OF GIs AND EXCHANGE OF INFORMATION

- Information provided by the IPR holder is key:
 - **product description – authentic and fake**
 - **IP information**
 - **legal supply chain**
 - **black list of infringers**
 - **contact data of the company**



«application for action»

Authentic goods	
12 (*). Goods details IP right no: Goods description: CN tariff number: Customs value: European average market value: National market value:	<p><u>including get-up and graphic symbols as well as images of the goods</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
13 (*). Goods distinctive features Position on the goods: Description:	<p><u>such as markings, labels, security threads, holograms, buttons, hangtags and bar-coding</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
14 (*). Place of production Country: Company: Address: Town:	<p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
15 (*). Involved companies Role: Name: Address: Town: Postal Code: Country:	<p><u>authorised importers, suppliers, manufacturers, carriers, consignees or exporters</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
16 (*). Traders Name: Address: Town: Postal Code: Country:	<p><u>persons or entities authorised to trade in products involving the use of the IPR(s)</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
17. Goods clearance details and distribution information	<p><u>channels of distribution (central warehouses, dispatch departments, means of transport, transport routes and delivery) and customs procedures and offices</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
18. Packages Kind of packages: Number of items per package: Description (incl. distinctive features):	<p><u>kind of packages, typical features of the packages (markings, labels, security threads, holograms, buttons, hangtags, bar-coding, ...), special package designs (colour, shape), images</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>
19. Accompanying documents Type of document: Description:	<p><u>documents accompanying the authentic goods, such as brochures, operating instructions, warranty documents, ...</u></p> <p><input type="checkbox"/> Restricted handling</p> <p><input type="checkbox"/> See enclosed annex no</p>



Infringing goods	
20. Goods details IP right no: Goods description: CN tariff number: Minimum value:	<input type="checkbox"/> Restricted handling <u>including get-up and graphic symbols as well as images of the goods</u> <input type="checkbox"/> See enclosed annex no
21. Goods distinctive features Position on the goods: Description:	<input type="checkbox"/> Restricted handling <u>such as markings, labels, security threads, holograms, buttons, hangtags and bar-coding</u> <input type="checkbox"/> See enclosed annex no
22. Place of production Country: Company: Address: Town: Postal Code:	<input type="checkbox"/> Restricted handling <u>known or suspected place of origin, provenance and delivery of the infringing goods</u> <input type="checkbox"/> See enclosed annex no
23. Involved companies Role: Name: Address: Town: Postal Code: Country:	<input type="checkbox"/> Restricted handling <u>importers, suppliers, manufacturers, carriers, consignees or exporters who are suspected of being involved in infringements of the relevant intellectual property rights</u> <input type="checkbox"/> See enclosed annex no
24. Traders Name: Address: Town: Postal Code: Country:	<input type="checkbox"/> Restricted handling <u>persons or entities not authorised to trade in products involving the use of the IPR(s) for which enforcement is sought and who have been trading the products in the Union in the past</u> <input type="checkbox"/> See enclosed annex no



25.	Goods distribution information	<input type="checkbox"/> Restricted handling	<p>information on channels of distribution of the infringing goods (warehouses, dispatch departments, means of transport, transport routes, places of delivery, ...) and on customs procedures and offices where the clearance of the infringing goods is carried out</p> <p style="text-align: right;"><input type="checkbox"/> See enclosed annex no.</p>
26.	Packages Kind of packages: Number of items per package: Description (incl. distinctive features):	<input type="checkbox"/> Restricted handling	<p>kind of packages, typical features of the packages (markings, labels, security threads, holograms, buttons, hangtags, bar-coding, ...), special package designs (colour, shape), images of the goods</p> <p style="text-align: right;"><input type="checkbox"/> See enclosed annex no.</p>
27.	Accompanying documents Type of document: Description:	<input type="checkbox"/> Restricted handling	<p>documents accompanying the suspected infringing goods, such as brochures, operating instructions, warranty documents, ...</p> <p style="text-align: right;"><input type="checkbox"/> See enclosed annex no.</p>
28.	Additional information <input type="checkbox"/>	<input type="checkbox"/> Restricted handling	<p>any other information relevant to the customs authorities' analysis and assessment of the risk of infringement of the IPR(s) concerned such as specific information concerning planned deliveries of suspected infringing goods, including specific and detailed information on means of transport, containers and persons involved</p> <p style="text-align: right;"><input type="checkbox"/> See enclosed annex no.</p>



- For information exchange the Observatory has developed EDB for Customs and Police (**i.e., borders and market controls**)



EDB
Enforcement
Database



Product information

General Info

Identifier
shaver007

Category
Category

Product Specification
shaver

Upload main product image

Barcode

Search in the results:

+ BARCODE

No data available in table

Showing 0 to 0 of 0 entries

Dec 7, 2015
Jun 1, 2016

Always Include
Letter of guarantee

CN Tariff
[01012100] Pure-bred breeding animals

Declared value on the border
Declared value on the border (euros)

Average Market Value
0

Minimum quantity
Minimum required quantity for action

Showing 0 to 0 of 0 entries

Showing 10

Previous
Next



Company information



The screenshot shows the EDB Enforcement Database interface. The header includes the EDB logo and the tagline 'A platform for IP right holders and enforcement authorities'. The main navigation bar lists various sections: Dashboard, Company Information (highlighted), Product Portfolio, Application for Action, Suspicious Case Room, Alerts for Customs and Police, Company Portfolio, Customs and Police Repository, Statistics, Help, User management, and ACRIS. The 'Company Information' section is active, displaying a list of links: Product Portfolio, Company Details, Contact Points, IPR Portfolio, Additional Webpages, Selling Strategy, and Document Portfolio. The page is numbered 12 in the bottom right corner.



Electronic application for action



Application for Action

Protect your rights on the border providing the customs authorities with the necessary information about your rights, contacts and products.

The Application for Action allows the applicant to request the customs authorities to take action with respect to goods suspected of infringing an intellectual property right.

Further details can be found in the [Manual for Application for Action](#) provided by DG TAXUD.

- 1 Select countries and languages
- 2 Select your IP Rights
- 3 Select your product
- 4 Review and send preAIA to COPIS

2. Please select the IP Rights

If you have selected several countries (Union AFA), you can only include IPRs based on Union law applicable throughout the EU. The following table includes only the IPRs that are associated to your products in the [Product Portfolio](#). If there are no IPRs in the table, please relate your products to your IPRs.

☒ Select all my IPR portfolio

← Previous 1 Next →

SELECT	IPR NAME	REFERENCE	STATUS	TYPE	OFFICE
<input type="checkbox"/>	<input type="text" value="Ipr Name"/>	<input type="text" value="Reference"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value="Office"/>
<input checked="" type="checkbox"/>	Plant test	PlantTest1	Registered	Plant Variety	

Showing 1 to 1 of 1 entries

Showing 25 entries

← Previous 1 Next →

< Back Next >





THANK YOU



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