



An e-newsletter published by the WCO IPR Strategic Group

# Counterattack

## Important role of Customs in implementing effective border measures against IPR crime highlighted at Rome and Shanghai meetings

The WCO IPR Strategic Group is a working partnership between Members of the World Customs Organization and intellectual property rights holders that seeks to facilitate Customs capacity building with respect to IPR border issues.

It also aims to raise awareness of the critical role that effective border measures can play in mitigating the serious social and economic consequences of the illicit trade in counterfeit goods.

Don't forget our web-site at: [www.wcoipr.org](http://www.wcoipr.org) !

The highly successful WCO Global Leaders Forum held in Brussels in May 2004 was the stimulus for two subsequent regional meetings in Rome during October 2004 and Shanghai in December 2004. At both events, senior Customs administrators and business leaders met to give impetus to partnership building in the European and Asia Pacific regions, respectively.

From both regions, expert speakers discussed the economic and social impact of the current levels of IPR crime and how Customs administrations, who sit astride the international trade process, could be most effective in supporting the fight against an increasingly pervasive and resourceful foe.

At the meetings, the need for Customs capacity building, the development of information sharing regimes, partnership and the use of technology were cornerstones of the discussions. Speaker after speaker gave graphic accounts of the damage that were being caused to communities, companies and government treasuries by IPR crime. There was broad agreement of the threat that such crime poses to economic progress in both developed and developing economies. It was apparent that the counterfeiting of goods is distorting the international marketplace and that an increasing proportion of commodities being traded are not genuine. Various quantifications of the scale of the problem were given but, in general, there was a consensus among informed observers, that in real terms, the annual cost probably amounts to US\$70 for every person on our planet.



Panelists listen to presentation at the Global Congress/WCO Regional Forum held in Shanghai. The Forum was jointly hosted by China Customs

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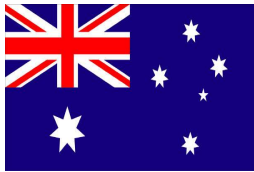
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## Our new electronic newsletter seeks to help inform Customs administrations and their business partners on IPR issues

A very warm welcome to the first edition of our new global newsletter that will be distributed quarterly to Customs administrations, members of the WCO IPR Strategic Group and other interested parties. Customs to Customs and Business to Customs information sharing has been identified as one of the key weapons in preventing the movement of counterfeit goods across international borders.

We hope that this publication will enrich the dialogue between Customs and IPR rights holders and add value to the search for solutions to a serious economic and social problem.

If you would like to make a contribution to the newsletter we would be very pleased to receive it. We would particularly like to learn of examples of border enforcement successes, co-operation between the private sector and Customs administration, changes in legislation or Customs procedures, specific initiatives and forthcoming events. They may be e-mailed (preferably in MS Word format) to [asiapacificipr@msn.com](mailto:asiapacificipr@msn.com) or to [info@wcoipr.org](mailto:info@wcoipr.org).



## Strong working relationships show positive results

Strong working relationships and co-operation between the Australian Customs Service and intellectual property (IP) rights owners continues to show positive results in the fight against counterfeit and pirated goods.

The latest statistics show that Australian Customs made almost 5,000 separate seizures, comprising 2,380,000 items, over a recent 12-month period. The types of goods seized include toys, trading cards, videos and DVDs, clothing, footwear and clothing accessories, handbags, sporting and other bags, watches, computer games and software, jewellery, sunglasses and mobile phone accessories.

Australian Customs works closely with IP rights holders to identify and seize infringing goods. It does this through the provisions of the *Trade Marks Act 1995* and the *Copyright Act 1968* under what is termed a Notice of Objection scheme. IP rights holders can protect their intellectual property by lodging a Notice of Objection. This Notice identifies them as the owner, or authorised user, of the intellectual property and allows Australian Customs to seize infringing goods at the time of importation. The Notice is valid for up to two years and can be renewed when it expires. Altogether, some 190 firms are registered with Customs for counterfeit and pirated goods.

Australian Customs does not release goods which it suspects infringe IP rights covered by a Notice of Objection for a specified period (usually 10 working days but can be up to 20 working days), in which time the IP rights holder may initiate action in court against the importer. If the rights holder does not initiate action in court then the goods are returned to the importer. However at any time prior to court action being brought by the IP rights holder, the importer may voluntarily forfeit the goods to the Australian Government. Goods may also be forfeited as a result of a court decision. Forfeited goods are usually destroyed.

Among the latest seizures was a shipment containing more than 9,000 tubes of cosmetic cream, purporting to be a brand manufactured by the international company, Procter & Gamble. This was the third such detection of fake Procter & Gamble products detected by Australian Customs within 12 months. The first two detections consisted of over 53,000 plastic bottles of counterfeit shampoo.

Procter & Gamble's legal counsel, Nimalan Rutnam, commented,

"On behalf of Procter &

Gamble, please accept our thanks and our continued support in assisting Customs do what it does best, being to protect our borders including from the entry of counterfeit goods".

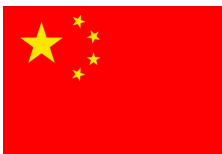


In 2003 Louis Vuitton Malletier SA also warmly congratulated Australian Customs for its effectiveness in combating the trade in counterfeit goods, marking the occasion by presenting a plaque of appreciation to the Australian Minister for Justice and Customs, Senator Chris Ellison.

*We are grateful to the ACS for this article*

*".....please accept our thanks and our continued support in assisting Customs do what it does best, being to protect our borders including from the entry of counterfeit goods"*

## Shanghai Declaration provides a model pathway to regional success against illicit cross border counterfeiting trade



A Brief Report of the Global Congress/WCO Forum on Protection of Intellectual Property Rights jointly hosted by China Customs

*“.....the Governments of the Asia/Pacific region, their agencies and private sector partners have identified counterfeiting as a major problem causing significant harm to national and business interests through the loss of tax and company revenues, diversion of government resources, higher costs for law enforcement and negative impacts on economic development, employment and investment”*

*- extract from the Shanghai Declaration*



Meeting in Shanghai in November 2004, delegates from more than 20 Asia Pacific Customs administrations, intergovernmental partners and business leaders shaped a regional plan to improve the effectiveness of border measures against counterfeiting.

The Shanghai Declaration identified legislation and procedures; risk analysis including information sharing and communication; and capacity building as being the central pillars of a regional strategy.

Among the key elements identified were improving understanding at the political and policymaking level of the serious consequences of the counterfeiting trade and the vital role that enforcement authorities in the region can play in fighting IP crime.

Encouraging countries to modernize their Customs legislation on IP border measures by taking into account the WCO Model Law, would also:

- reduce or eliminate the re-

quirement for IP owners to pay bonds for counterfeiting cases;

- facilitate simplification of procedures for obtaining court orders
- empower customs officials to conduct in-depth investigations into counterfeiting and piracy cases .

Delegates articulated the need to establish channels for strengthening the exchange of information between the customs administrations of the Asia-Pacific region and other foreign customs administrations to enable the effective sharing of information relating to counterfeit goods.

In addition to the expansion and promotion of information-sharing and cooperation between Customs, other enforcement agencies and the private sector to effectively facilitate combating IPR abuses was also seen as an important weapon; as was the establishment of a regular regional IPR forum to ensure that the relationship

between these important players continues to develop.

The role of the WCO Regional Intelligence Liaison Office (RILO) in the Asia/Pacific region and the need to design protocols on the exchange of IPR information between customs authorities and rights holders and vice versa were also recognised.

Capacity building recommendations included :

- the provision of advanced communication tools for Customs to facilitate investigations
- intensifying enforcement capabilities and sanctions;
- developing a comprehensive programme of IPR technical assistance and capacity building for enforcement authorities, including the exploration of funding sources
- the conduct of a WCO exercise in the Asia-Pacific region to identify and intercept counterfeit products in containers.



## WCO IPR workshop assists Vietnam Customs to build effective border measures

Approx 50 Customs officials and 12 participants from other Vietnamese ministries and agencies involved in the administration or enforcement of IPR legislation attended a January 2005 workshop jointly hosted by the WCO and the Vietnamese Customs Administration.

Participants had an opportunity to discuss the TRIPS Agreement, existing national IPR law and the essential elements of WCO model legislation .

In addition, Wilfrid Rogé from French Customs, provided expert advice on the use of risk indicators in the detection of consignments of counterfeit goods. Today, intelligence based intervention forms the core rationale for customs inspection activity around the world and it has particular relevance in the fight against IPR border crime.

IPR experts from more than 15 international companies provided useful briefings as to their perspectives of the move-



ment of counterfeit product being imported, exported or transited through Vietnam. These briefings included the scale, modus operandi and vulnerabilities of the illegal traffic.

All presenters complimented the Vietnamese Customs Administration for the contribution that they were making to suppressing the illegal traffic. They were also mindful that Vietnam Customs , as with other Customs authorities around the world, was required by its Government to undertake many different responsibilities.

All participants welcomed the opportunity for discussion and dialogue and were confident

that the Workshop would prove a platform for future co-operation.

With respect to inter-agency co-operation, it was recognized that success in the field of IPR enforcement, just as in other areas of law enforcement, requires the imagination, skills and commitment of all competent agencies. Each agency possesses unique abilities and knowledge and it is by harnessing these that the best results can be obtained.

Vietnam is currently involved in extensive trade negotiations focused on attaining WTO Membership.



*“.....intelligence based intervention forms the core rationale for customs inspection activity around the world”*

## Chile meeting of APEC Leaders endorses progress on comprehensive IPR Strategy

Ministers from Australia; Brunei Darussalam; Canada; Chile; the Peoples Republic of China; Hong Kong, China; Indonesia; Japan; the Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Republic of

the Philippines; the Russian Federation; Singapore; Chinese Taipei; Thailand; the United States of America and Vietnam met in Santiago Chile in November 2004 and welcomed progress that had been made on the IPR Policy Progress map-

ping and the follow-up report on the *Comprehensive Strategy on IPR in APEC* as means to strengthen business confidence in the region. They also encouraged the establishment of IPR Service centers in all member States as soon as possible.



## Counterfeiters hit hard by South African Customs action



Searching an industrial estate on the East Rand, officials of the South African Revenue Service (SARS) sealed off 130 storage units and on inspection found that they contained 1,500 cartons of counterfeit cigarettes and substantial quantities of counterfeit DVD's, computer and Play Station games. The total value of the counterfeit goods seized amounted to approx US\$1,300,000.

SARS officials indicated that

had the goods not been detected then there was a potential VAT revenue loss amounting to the equivalent of US\$ 520,000.

In a January 2005 press release, the Commissioner of SARS, Pravin Gordhan said that the huge amount of goods seized indicated the serious threat the illegal trade posed to legitimate economic operators. He said that international trade supply chains were at risk of being exploited by organized crime

syndicates and rogue traders. In addition, the supply chain must also contend with the threat of international terror.

Commissioner Gordhan said that the WCO had identified commercial fraud as a serious concern to customs administrations around the world because it threatens the economic security of the trade supply chains.

## European Union reports substantial increase in seizures of counterfeit goods



Statistics published in February 2005 by the European Commission, portrayed a significant increase in the volume of counterfeit and pirated articles seized at the external borders of the EU. In 2003, Customs officials seized almost 100 million articles with an estimated value of € 1 billion. This represented an almost 20% increase in value over the level of 2002 seizures. The trend in recent years of a move from smuggling luxury goods to smuggling everyday products continued in 2003 and it was noted that new Member States made a significant number of the seizures.

The EU Taxation and Customs Commissioner, Lázló Kovács commented "Counterfeiting and piracy increasingly involve children's toys, medicines and food products and this

constitutes a real danger to consumers".



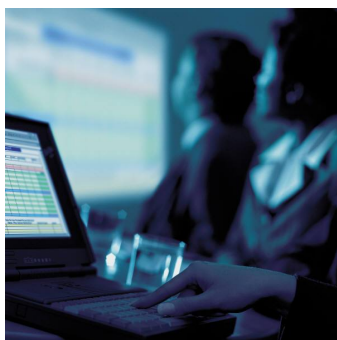
The overall number of seizures increased by almost 41% and the Commission noted that the greatest increases in the number of seizures related to counterfeit games and toys. An almost 80% increase in foodstuff and alcohol seizures, including such diverse products as sweets, waffles, chewing gum and even apples, were of concern from the point of view of consumer health and safety, as was counterfeit Viagra which had been found in commercial

consignments and mail.

70% of the total amount of counterfeit goods seized during 2003, had originated from Asia.

Analysis of the 2004 statistics has not yet been completed but the provisional results demonstrate that the Customs authorities in the new EU Member States have been very active since their accession in May 2004.

By way of example, Hungarian Customs had seized approximately 300,000 face and body lotions, Maltese Customs had seized 10,000 car parts, Lithuanian Customs intercepted 400,000 batteries and the Estonian Customs had intercepted 11 containers of counterfeit clothing.



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## Customs IPR Expert Group extends a warm invitation to all WCO Customs administrations

Sharing information and techniques between Customs administrations is a vital component in developing an effective global strategy against IPR crime.

Approximately 10 Customs administrations regularly attend meetings of a Customs IPR Expert Group which is a forum for the exchange of ideas and experiences relating to specific customs operational issues.

This dialogue is of just as much value to those WCO Members who have considerable experience in combating counterfeiting as it is for those for whom anti-counterfeiting activities are

a relatively new responsibility.

The Chairperson of the Customs IPR Expert Group is Brigit Gijbers (Netherlands) and she is enthusiastic to involve as many Customs administrations in the work of the Group as possible, particularly from those administrations who already have permanent representation in Brussels.

“By achieving the broadest possible dialogue, the greater will be the effectiveness of international customs action and with all the plans the Expert Group has, you can imagine that we would love to have much wider participation from

colleague Customs administrations” she said.

She also pointed to the essential and on-going contribution that Members of the Expert Group make to the various training and capacity building activities of the WCO IPR Strategic Group, providing expert advice and tuition.

In discussing the work of the Customs Expert Group, Brigit Gijbers pointed to the development of practical tools such as the Handbook of Risk Indicators, the Guideline on controlling Free Zones, the guidelines for Industry and the technical paper on Overruns.



### Handbook on Risk Indicators

Informed risk assessment is a fundamental weapon against IPR border crime as well as providing benefits to the facilitation of legitimate trade.

17 specific risk indicators are mentioned in this handbook. It is a very practical tool, which

can be used during the course of documentation examination to select those consignments which have to be opened for further control.

The risk indicators relate to both the packaging and the goods themselves.

Ms Gijbers acknowledged the contribution from colleagues in the United States and the Netherlands in compiling the Handbook and said that because risk and threats constantly change, it was currently being reviewed.



### Guideline on controlling Free Zones

Customs and IPR holders are aware that Free Zones around the world are frequently used for the distribution and manufacturing of counterfeits and to disguise the real origin of the goods. Free Zones are used by Governments to promote trade and they provide a free trad-

ing environment, whereby a minimum level of regulation is demanded of companies who operate within them. These companies get a wide range of benefits such as exemption from duty and taxes and simplified administrative procedures. Minimal or no Customs control

(either because Customs do not have the legal power or do not exercise existing powers) creates problems in relation to counterfeit goods. In this guideline, the Expert Group provides advice on the legal situation and on how free zones could be controlled.



## Guidance Notes for Industry

Customs and the businesses have to tackle the problem of counterfeits in international trade together. In contradiction to other fields of enforcement, the TRIP's Agreement, very clearly envisages a public private partnership to combat counterfeits. The right holders must send in applications for intervention by Customs. They have to play their part in identifying if goods are counterfeits or not. To select suspect coun-

terfeit consignments it is necessary for Customs to have as much as possible information from the right holder about the genuine goods, where they are manufactured, how they are distributed, which parties are involved in the transportation, who is the exporter and who the importer, etc. The more information Customs receive; the simpler it is to select the container with the counterfeit goods.

“We want to facilitate the flow of legitimate trade and focus only on the shipments which present a high potential for IPR violation, so we made this guidance note. It is not a binding instrument unlike the information asked in the application, which has its base in national legislation, but it gives advice as to the type of information which would be useful for Customs” said Ms Gijssbers.

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*“By achieving the broadest possible dialogue, the greater will be the effectiveness of international Customs action.....”*

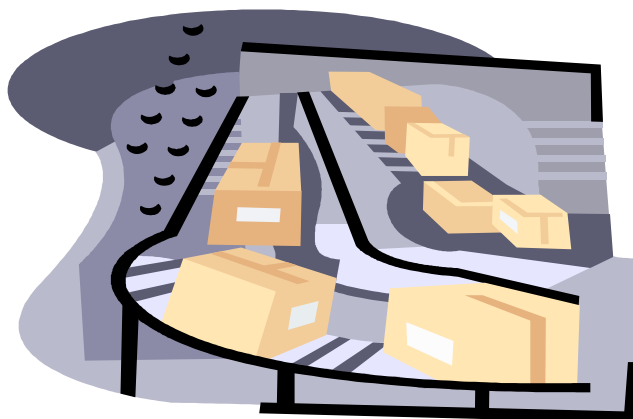
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## Technical Paper on Over-runs

Overruns are goods produced outside the existing contract between the rights holder and the manufacturer who is authorised to produce genuine goods.

The paper provides advice as to how these may be treated in the Customs environment.



## Future plans of the Customs Expert Group

- Update Handbook on risk indicators
- Provide WCO with advice on the Diagnostic framework on IPR
- Provide WCO with advice, material for the E-learning tool on IPR
- Start a discussion on the role of service providers in IPR border enforcement.

Freight forwarders, shipping companies, customs brokers etc act as “the eyes and ears” of Customs with respect to drug enforcement and often on the basis of M.O.U.s they provide Customs with valuable information (ACTION/DEFIS-program).

- To promote the use of CEN in conjunction with the WCO Secretariat.

- Produce a Guide to making applications
- Produce a Guide to the storage, recycling and destruction of the seized goods.
- Drafting a framework for training and capacity building sessions with a view to improving the current process and content



