

Introduction

Practical approaches to strengthen customs coalition against illicit IP rights trade

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The fight against goods that infringe IP rights has been on the agenda of the World Customs Organization (WCO) for a long time. Awareness of the need for action resulted in the establishment of guidelines in this field that included the first model IP rights legislation developed as early as 1988. Consequently, customs authorities have always been at the forefront of the fight against illegal IP rights trade, making 90% of all seizures of counterfeited goods in Europe and more than 70% worldwide.

Manufacturers, distributors and entrepreneurs are looking for a fair trading environment in which their products or trademarks will receive adequate protection against unfair competition. As international companies are now tending to reduce their manufacturing and distribution sites, they have become extremely selective in choosing the countries in which to invest. The efforts that countries go to in order to create a fair trading environment for these markets is therefore a crucial factor.

Against this backdrop, counterfeit trade has continued to evolve in a worrying manner and now covers a wide range of commodities that directly affect the health and safety of people and hinder sound economic and social development. Likewise, counterfeit operators have become more sophisticated in concealing the true origin of goods and exploiting differences in border control from port to port. Moreover, IP rights infringement represents a lucrative business opportunity for organised crime. As a result, the international community is increasingly alarmed by the new criminal trend – often called ‘the crime of

21st century’ – and is expressing its concern in an increasingly vocal way. Consequently, the WCO has received growing demands from both developed and developing countries to compile and share best practices and to provide technical assistance to strengthen border controls against counterfeit trade.

Our mission today is therefore to assist customs administrations worldwide to achieve their various objectives by:

- helping WCO members to implement the World Trade Organisation Agreement on Trade-Related Aspects of IP Rights in conjunction with the World Intellectual Property Organisation and our other international partners;
- providing a forum for cooperation and information exchange;
- conducting research; and
- delivering capacity building and technical assistance at the request of our members.

Diagnostic missions: surveying national anti-counterfeiting regimes

The WCO’s anti-counterfeiting capacity building programme consists of diagnostic missions, risk analysis training, operational exercises and e-learning. This combination has existed for a number of years and has proven to be effective over time.

Diagnostic missions take account of the socio-economic realities of each country; they assess the whole anti-counterfeiting regime surrounding each member’s customs administration, which comprises four pillars of assessment as set out below:

- Pillar 1 – legislation:
 - compliance with the international IP rights legislative framework (TRIPs);
 - accurate analysis of national IP rights legislation in force; and
 - legislative proposals on request, in relation to the national socio-economic situation.

- Pillar 2 – cooperation with the private sector:
 - assessment of the customs/business partnership;
 - assessment of cooperation tools; and
 - promotion of the customs application for action.
- Pillar 3 – risk analysis:
 - assessment of national IP rights risk management;
 - assessment of specific IP rights risk indicators and detection/selection techniques employed at a national level to stop IP rights-infringing consignments; and
 - evaluation of national customs structures set up to combat IP crime.
- Pillar 4 – intelligence sharing and international cooperation:
 - assessment of national IP rights information exchange systems and collection of IP rights data; and
 - evaluation of national customs authorities’ commitment to enhancing IP rights knowledge.

At the end of each five-day diagnostic mission, conducted at the request of a WCO member, the IP rights expert team produces a diagnostic report containing a set of non-mandatory recommendations relating to the four pillars of assessment, which gives an initial picture of the IP rights situation in the recipient national customs administration. This is followed by the recipient customs administration’s response. Using the report and the recipient’s response, the WCO will then set up targeted capacity-building activities to enhance the member’s IP rights enforcement capabilities.

Enhanced risk analysis and targeting: strategies to win the war

In the WCO Customs Risk Management

“ IPM does not just help customs officers to identify fakes. Specific information contained in IPM, such as on the routing and packaging of genuine goods and previous cases, will alert customs officers on the ground ”

Compendium adopted by the WCO Council during its annual sessions in June 2011, ‘risk analysis’ is defined as the “systematic use of available information to determine how often defined risks may occur and the magnitude of their likely consequences”. ‘Targeting’ is defined as “the selection for examination/audit of a certain consignment, passenger, means of transport, transaction or entity based on risk analysis, profiling, document review, observation and questioning techniques”.

During its national and regional seminars, in addition to raising awareness of the national/regional situation and legislative aspects surrounding counterfeiting and piracy, the WCO strongly advocates the enhancement of practical risk analysis and targeting techniques of customs officers. A typical programme during these seminars starts with the analysis of the latest trends and the sharing of information on national legal mechanisms and case studies, continuing to product identification techniques demonstrated by rights holders, before moving to the theory and desktop exercises on risk analysis and targeting techniques.

What makes these WCO seminars unique and effective is that they do not end up in the classroom. In close cooperation with the seminar host country, participants gain access to actual or ‘live’ shipping documents in order to analyse information in these documents and thereafter identify any possible risks with a view to targeting the containers or cargoes that most likely contain counterfeits. Once this exercise has been completed, participants are then taken to container yards where they open targeted containers to verify whether their analysis is correct. Through applying techniques introduced during classroom lessons to the actual situation on the ground, participants gain not only knowledge of risk analysis and

targeting techniques, but also the confidence to apply what they have learned.

Interface Public-Members: a strong weapon

In comparison with drugs or weapons, counterfeiting in general – and of fake medicines and other dangerous products in particular – poses problems for customs officers in terms of identifying infringing goods. For this reason, dedicated training in product identification techniques is provided by rights holders during WCO national/regional seminars. However, it has always been a challenge for both customs authorities and rights holders to communicate updated product information, which is constantly changing and critical for effective and efficient customs intervention at the border.

In order to overcome this challenge, the WCO launched a tool for in-service training in the identification of counterfeits in close partnership with the private sector. This new tool, known as the WCO Interface Public-Members (IPM), consists of an online database that enables rights holders from all sectors to provide customs field officers with real-time data on their products as well as other relevant information making it possible for customs officers to distinguish clearly between genuine and fake goods.

IPM does not just help customs officers to identify fakes. Specific information contained in IPM, such as on the routing and packaging of genuine goods and previous cases, will alert customs officers on the ground – who carry out risk analysis and targeting, including opening containers and inspecting goods with their own eyes – about any goods that may be suspicious. It also enables these officers to contact concerned rights holders immediately in order to verify their suspicions and initiate follow-up legal action.

Regional intelligence liaison offices: regional forces that offer support

The WCO has set up a global network of regional intelligence liaison offices (RILOs) as part of its enforcement strategy. These RILOs, currently comprising 11 offices around the world, are regional centres for collecting, analysing and supplementing data, as well as disseminating information on trends, modus operandi, routes and significant cases of fraud, including IP rights violations.

Working effectively through their long-term monitoring projects relating to counterfeiting and piracy, the RILOs have been successfully identifying new trends and providing critical intelligence to national customs administrations for quite some time. A major example is Operation Vala, which was initiated by the RILO for East and Southern Africa and which targeted infringing goods, including those relating to the 2010 Football World Cup held in South Africa.

The RILOs also play a key role in global operations by working as a liaison between the Operation Coordination Unit and participating member customs administrations, as well as by enhancing information exchange between customs authorities that is carried out via CENComm (the WCO’s secure communication tool used during operations). The analytical expertise of the RILOs also helps the Operation Coordination Unit to develop the final report in an enforcement operation in an accurate and timely manner.

Sweeping global enforcement operations: success through training and partnerships

Between April and May 2011 the WCO Secretariat launched Operation Tigre and Operation Fred60, both targeting the illicit cross-border shipment of counterfeit and pirated goods en route from Far East Asia to countries in the Central American/Caribbean region and the West/Central

African region, respectively. Twenty-nine customs authorities from interested regions were involved, and the operations were coordinated by staff from the WCO Secretariat and WCO IP rights experts.

During the five-day operations, customs officials at designated seaports intensified their risk profiling and physical controls to identify high-risk shipments, and notified each other of any suspicious shipments across the continents. The operations were aimed at identifying deep-sea containers suspected of containing counterfeit or pirated goods, as well as at increasing information exchange among customs services – a fundamental element in tackling IP rights crime at the border.

Both operations had a number of goals:

- preventing products that could jeopardise consumer health and safety from entering the national territories of participating countries;
- sending a strong message to counterfeiters and the international community that the main shipping routes are now being more closely monitored by customs administrations;
- attempting to quantify and qualify the scope of this phenomenon throughout the region;
- sharing information on suspect products in real time between the various customs administrations involved in the operations, via the most appropriate information-sharing systems;
- detecting new counterfeiting routes and new places of concealment;
- detecting new fraud techniques;
- providing training under real-life conditions to customs officers likely to join specialised enforcement units; and
- conducting large-scale testing of best practices in the risk analysis and information-sharing domain, as well as follow-up provisions for their implementation.

The operations were preceded by training workshops (in Panama for Operation Tigre and in Cotonou, Benin for Operation Fred60) involving participant customs administrations and representatives from the private sector. They brought together rights holders and the operational services of customs administrations that took part in the operations. These workshops enabled participants to share their experiences on the detection of fakes and how to distinguish between genuine and fake articles, as well as the criteria which customs operational services had used in the past to

intercept targeted high-risk goods successfully. Participants also had the opportunity to learn first hand about the latest ploys used by counterfeiters.

More than 3,5 million articles were intercepted during Operation Tigre, while Operation Fred60 resulted in the interception of more than 43 million articles. The success of these operations underscored the value of training and the sharing of experiences among stakeholders, as well as the importance of customs-customs and customs-business partnerships as a means of combating the illicit trade in counterfeit and pirated goods, and promoting respect for IP rights. With these successes in mind, the WCO will continue its fight against IP rights infringements, which will include the organisation and coordination of further IP rights enforcement operations around the world. [WTR](#)



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Before taking up his position as secretary general of the World Customs Organization (WCO) on January 1 2009, Kunio Mikuriya spent seven years as the organisation's deputy secretary general. Prior to joining the WCO, he worked for Japan's Ministry of Finance for 25 years. During his career with the ministry, Mr Mikuriya occupied a variety of senior posts, which have given him broad experience in customs, development, budget and financial policies. In addition, he spent time as a counsellor at the Japanese Mission to the World Trade Organization in Geneva and participated in the Uruguay Round trade negotiations, which enabled him to acquire an excellent knowledge of trade-related issues. Mr Mikuriya has a BA in law from the University of Tokyo (Japan) and a PhD in international relations from the University of Kent (United Kingdom).