



**Asia-Pacific
Economic Cooperation**

**INTELLECTUAL PROPERTY RIGHTS (IPR)
ENFORCEMENT STRATEGIES**

Sub-Committee on Customs Procedures

September 2006

Prepared By
Australian Customs Service
5 Constitution Ave
Canberra City ACT 2601
Australian Customs Service
Email: information@customs.gov.au
Website: www.customs.gov.au

FOR THE ASIA-PACIFIC ECONOMIC COOPERATION SECRETARIAT
35 Heng Mui Keng Terrace Singapore 119616
Tel: (65) 6775-6012 Fax: (65) 6775-6013
Email: info@apec.org
Website: www.apec.org

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APEC#206-CT-01.4

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Executive Summary

The APEC Sub-Committee on Customs Procedures (SCCP) is pleased to present the Intellectual Property Rights Enforcement Strategies Report to the APEC Committee on Trade and Investment (CTI).

An effective Intellectual Property Right (IPR) system is important to trade because it provides confidence to business that rights will be respected and that profits will be returned to IPR holders when goods and services are traded in the region. Strong IPR systems boost economic growth, promote investment and develop industries that promote creativity and innovation.

At the APEC Economic Leaders' Meeting, held during November 2005, the importance of strong IPR protection and enforcement to economic growth and trade in the Asia-Pacific region was recognised. Leaders welcomed the Anti-Counterfeiting and Piracy Initiative and endorsed the model guidelines to stop international trade in counterfeit and pirated goods, reduce on-line piracy, and prevent the sale of counterfeit and pirated goods over the Internet.

The Intellectual Property Experts Group has overall responsibility for IPR in APEC and works to support a strong and effective IPR system through the development and implementation of policy.

Customs administrations within the APEC region undertake a key role in enforcing IPR at the border.

At the first SCCP meeting in Vietnam 2006, economies committed to compiling an inventory of IPR enforcement activities of APEC members. This document is intended as a reference tool for customs administrations and businesses in the APEC region.

Australia

Administration: Australian Customs Service

Australian Customs administers the import provisions of the *Trade Marks Act 1995* and the *Copyright Act 1968*. These provisions comply with the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS).

In very broad terms this legislation gives Australian Customs the right to detain infringing goods while the Intellectual Property Rights (IPR) holder pursues civil action against the importer.

To protect trademarks or copyright material from counterfeit, pirated or unauthorised importation, Australian Customs administers a scheme known as the Notice of Objection Scheme. A team at Australian Customs head office in Canberra handles administration of the Scheme. The team ensures that applications for Notices of Objection are valid and further ensures that Australian Customs' operational staff in the states and territories, and importers are aware of the trademarks and copyright covered by these arrangements.

Owners of trademarks and copyright have prime responsibility for taking measures to protect their rights. This includes the registration of their trade mark or stating where copyright is claimed as required by law, and notification to Australian Customs that they own the rights to be protected.

To protect trademarks, or copyright material from counterfeit, pirated or unauthorised importation, the owner, or in some cases an authorised user, must have a Notice of Objection in place with Australian Customs. By law Australian Customs cannot seize infringing goods unless there is a Notice of Objection in place.

A Notice of Objection is a legal document that allows Australian Customs to seize imported goods that infringe trademarks or copyright. If infringing goods are found, the Objector will be notified that goods are being held and they have 10 working days to begin civil action (with a further possible extension of 10 working days approved by the Australian Customs' Chief Executive Officer) against the importer. If the Objector decides not to initiate civil proceedings, or the importer does not voluntarily forfeit the goods, the goods will be released to the importer.

A Notice of Objection under the *Trade Marks Act 1995* or the *Copyright Act 1968* is valid for two years. These Notices can be re-lodged to ensure ongoing protection. If the Notice is no longer required, the owner may withdraw it at any time. Separate Notices are required for trademarks and copyright.

Australian Customs also participates in the broader development of intellectual property rights protection and policy in Australia through an Inter-departmental Committee on Intellectual Property Enforcement. Representation on the committee includes members from a range of government agencies involved in the enforcement of IPR.

Australian Customs also maintains strong links with industry through a forum known as the Intellectual Property Enforcement Consultative Group. The group facilitates industry input into IPR enforcement strategies and provides an industry perspective on enforcement issues.

IPR Contact Details for Australia

Email: iprights@customs.gov.au
Website: www.customs.gov.au
Phone: +61 2 6275 6666
Fax: +61 2 8339 6714
Contact: Director, Community Protection
Address: Customs House, 5 Constitution Avenue,
Canberra ACT 2601, AUSTRALIA

Chile

Administration: National Customs Service

LAW 19912, published in Chilean Official Gazette on 04 Nov.2003, adjusted Chilean related legislation to the WTO Agreements and provided for the border measures regarding the enforcement of IPRs in Chile.

Under the above domestic legal framework, Chile Customs is empowered to execute the border measures against IPR infringement under two administrative procedures: One of them allows Customs to act upon a petition by one of the parties, and the second provides Customs with the power to act Ex-Officio.

Under the above procedures, the right holder (copyrights and trademarks) can request to the competent court in writing, the interruption by customs of customs clearance for the infringing goods. Upon a judge order, the importer, owner or consignee of the goods, plus the requesting party, are notified. The competent customs administrator is also notified to carry out the related clearance interruption procedure. The Customs Resolution authorizing the holding of goods by customs is circulated at national level. This measure will last 10 working days (with a further possible extension of 10 working days) during which the holder must begin a civil action. If no complaint or civil action is initiated, the goods that are being held by customs will be released to the importer.

Besides, where a simple physical examination of goods becomes evidence that such goods are counterfeited trademark or that they are infringing copyrights, Customs may act Ex-officio, interrupting release of goods for 5 days. The competent Customs Regional Director or Customs Administrator shall inform the right holder and consignee for them to initiate a civil action and provide information about authenticity of the goods. Customs may also file a complaint according to the law.

Chile Customs enforces this law both on imports and exports by implementing internal enforcement procedures. One of them includes linkages between Government agencies, allowing direct access for enforcement customs officers, via Customs Service Intranet, to the database of the Intellectual Property Department (DPI) of the Ministry of Economy. This password-access application contains records for all the patents and trademarks in Chile, and the customs officers can make on-line searches and obtain updated information on product trademark logo, details about the requesting party in the origin country of the trademark and legal representative in Chile. Also, the enforcement customs officers have access to an IPR link (via enforcement Intranet) with photos provided by right holders to distinguish genuine merchandise from fake ones, in cases where the right holder is registered with Customs based on instructions of Law 19912.

Some other customs activities include; annual planning of customs enforcement, based on risk management; permanent training; and co-ordination with private and public sectors at national and international level.

IPR Contact Details for Chile

Email: contacto@aduana.cl
Website: www.aduana.cl
Phone: 56-32 2200883
Fax: 56-32 2200639
Contact: Operating Enforcement Department
Address: Plaza Sotomayor 60, Valparaiso Chile.

Canada

Administration: Canada Border Services Agency

The *Customs Act* does not provide Canada Border Services Agency (CBSA) officers with the legal authority to enforce either the *Copyright Act* or the *Trade-marks Act*. If the items in question are not prohibited, controlled or regulated, and no customs violation is committed (i.e., undeclared goods), there can be no seizure of the items under the authority of the *Customs Act*.

Where encountered during the administration of the *Customs Act*, or when supplied with specific intelligence, the CBSA will detain goods that may be in violation of Intellectual Property Rights (IPR). In such situations the Royal Canadian Mounted Police (RCMP) will be contacted to conduct an investigation. The interest and involvement of the RCMP is a prerequisite to initiate the prosecution process.

The CBSA is working with inter-departmental partners to explore options that will address the growing concerns over the risks of unsafe counterfeit products, loss of revenues and involvement of organized crime.

The government is currently reviewing the legislative authorities that would enhance the CBSA ability to combat the import of counterfeit goods.

Counterfeit goods are a global problem and Canada is working with international law enforcement and private sector communities to strengthen our response to this threat.

People's Republic of China

Administration: China Customs

China Customs protects trademarks, patents, copyrights and related rights in border enforcement under the Customs Law (January 2001), the Regulations on Customs Protection of Intellectual Property Rights (January 2004) and the Rules for Implementing the Regulations on Customs Protection of Intellectual Property Rights (July 2004), in compliance with the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS).

IPR enforcement system of China Customs is composed of three layers—the General Administration of China Customs (GACC), Customs Districts and Customs Houses.

According to the provisions, Customs implements two modes of IPR enforcement on both import and export—ex officio enforcement and enforcement pursuant to application, and is authorized to detain infringing goods upon application from right holders.

In the mode of enforcement pursuant to application, Customs will release the suspected infringing goods if no civil proceedings are initiated within 20 working days from the date of Customs detention.

To initiate the ex officio enforcement mode, it is prerequisite for right holders to record (or register) their rights with the General Administration of Customs (GAC). A centralized IPR recordation system (CIPRS) is set up at the level of the GAC, and right holders should file electronic application forms through the CIPRS as well as other required paper documents to the GAC. If goods suspected of infringing recorded intellectual property rights are discovered, Customs will notify the right holders and right holders should apply for detention within 3 working days. Where goods are detained upon application, Customs will investigate and make a decision within 30 working days. If Customs is unable to decide whether the goods are infringing intellectual property rights or not, Customs will notify the right holders and civil proceedings should be initiated within 50 working days from the date of detention, otherwise the goods will be released.

IPR Contact Details for People's Republic of China

Email: liqunying@mail.customs.gov.cn
Website: <http://english.customs.gov.cn>
Phone: (86 10) 6519 5362
Fax: (86 10) 6519 5358
Contact: Mr. Li Qunying, Director of Department of Policy and Legal Affairs
Address: General Administration of Customs
No.6, Jian Guo Men Nei Avenue
Beijing 100730
People's Republic of China

Hong Kong, China

Administration: Hong Kong Customs and Excise Department

Hong Kong, China has an established legal framework providing criminal sanctions against copyright and trademark infringements, as well as civil remedies for the protection of Intellectual Property Rights (IPR) in copyright, trademarks, patents and registered designs. We constantly review legislation to keep pace with international standards and ensure effective protection of IPR. The IPR laws are compliant with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Under the current legislation, copyright subsists in literary works such as plays, artistic works including drawings, paintings and sculptures, sound recordings, films, broadcasts, cable programmes and the typographic arrangement of published editions of literary, dramatic or musical works, as well as performances. Copyright is an automatic right and it arises when a work is created. It is not necessary to register a copyright in Hong Kong, China in order to receive protection by the law. Subject to a few exceptions, copyright expires 50 years after the death of the author.

The law also imposes control over optical disc manufacturing through a licensing system for optical disc and stampers manufacturers, and a mandatory requirement for all locally manufactured optical discs and stampers to bear an identification code. Furthermore, the importation and exportation of optical disc mastering and replication equipment are subject to licensing control.

Regarding other intellectual property such as trademarks, patents and designs, registration is required in order that such rights are protected by law.

To strengthen enforcement actions against syndicated piracy and counterfeiting, we have included piracy and counterfeiting offences under the Organized and Serious Crimes Ordinance (OSCO). Under the OSCO, Customs has greater powers of investigation into syndicated IPR infringement, and can seek heavier penalties from the court and the confiscation of the financial proceeds derived from piracy and counterfeiting.

Trade-Related Aspects of Intellectual Property Rights

In addition to criminal sanctions enforced by Hong Kong Customs, legislation also provides for border measures to ensure compliance with TRIPS. The law allows an IPR holder to apply to the court for a detention order where he reasonably suspects that an imported article is prima facie an infringing copy of the work in respect of which he is a right holder. The detention order is valid for 60 days. Hong Kong Customs will, in execution of the detention order, detain the goods in question pending civil action to be taken by the IPR holder against the person infringing his right.

The court may require the IPR holder to provide security or assurance in an amount sufficient to protect the importer and any other person having an interest in the goods to be detained from any loss or damage that may be incurred in the event that the detention is wrongful. Also, he is required to deposit with Hong Kong Customs an amount that is sufficient to reimburse to the Government such costs that are, or likely to be, incurred in regard to the execution of the detention order.

Resources Commitment

Hong Kong Customs has committed substantial resources to combat IPR infringing activities, including a strong dedicated force comprising around 250 officers in the Intellectual Property Investigation Bureau, and another 150 officers in the Special Task Force, both to enforce the criminal sanctions against IPR infringement. In addition, we have two Anti-Internet Piracy Teams to combat infringing activities on the Internet.

Targeting and Border Enforcement

Customs officers at the entry and exit points including the airport, sea/river terminals and land boundary control points are actively involved in the protection of IPR. In the course of their routine baggage and cargo examination duties, officers stay vigilant and apply risk-profiling techniques for detecting pirated and counterfeit goods. We also have an Intelligence Bureau responsible for actively sourcing and collecting intelligence from law enforcement authorities, IPR owners and members of the public. In addition, we deploy surveillance teams to collect intelligence through covert operations.

Stringent Enforcement

Hong Kong Customs is responsible for enforcing the IPR law at both the border control points and inland. Our operations are primarily intelligence-led. Apart from repeated and focused raids at black spots selling pirated and counterfeit goods, we also tackle the problem at source, and combat IPR infringing activities at the manufacturing, distribution and storage levels.

Customs-Industry Partnership

Hong Kong Customs maintains a close working relationship with the IPR industry in combatting piracy and counterfeiting activities. Cooperation includes intelligence exchange, identification and examination of seizures, and testimony in court. To further strengthen the partnership, Hong Kong Customs established the "Intellectual Property Rights Protection Alliance" (Alliance) with the local IPR industry in March 2004 and launched the Alliance website (<http://www.iprpa.org>) in September 2004 to monitor the illicit market and strengthen publicity against piracy and counterfeiting. The Alliance provides the platform of cooperation through which we are able to access the latest information provided by rights owners and take prompt action against the copyright pirates and counterfeiters.

Hong Kong Customs has also launched informer reward schemes which are sponsored by the IPR industry to combat copyright piracy including the use of pirated software in business, counterfeit and trademark-infringed pharmaceutical products, and illegal photocopying of books. In addition, we have launched a range of Customs-business partnership programs with different sectors of the IPR industry to combat piracy and counterfeiting in specific areas, e.g. the "E-auctioning with Integrity Scheme" with internet service providers, and the "Jewellery Integrity Campaign" with the Jewellery industry.

International Cooperation

Hong Kong Customs maintains close liaison with neighbouring and overseas enforcement agencies for intelligence exchange to curb cross-boundary IPR infringement activities. Direct liaison channels have been established with the Guangdong Sub-Administration of the General Administration of Customs and the National Copyright Administration of the People's Republic of China. We arrange regular liaison visits, meetings and seminars on IPR protection on a reciprocal basis to expand our new horizons for mutual assistance and cooperation. Hong Kong, China is also an active participant in various international organizations such as the Asia-Pacific Economic Cooperation and the World Customs Organization.

Publicity and Public Education

To curb the problem from the demand side, Hong Kong Customs attaches great importance to raising public awareness of IPR protection. Ongoing publicity and education programmes are organized in collaboration with other government departments and related organizations. Significant emphasis is also placed on educating the young people to respect IPR and to distance themselves away from any form of IPR infringement, in particular, internet piracy.

IPR Contact Details for Hong Kong, China

Email: cs_liu@customs.gov.hk
Website: http://www.customs.gov.hk/eng/major_IPR_protection_e.html
Phone: (852) 2852 1439
Fax: (852) 2850 7952
Contact: Mr Alex CS LIU
Address: Customs & Excise Department, Rm 1039 Rumsey Street
Multi-storey Carpark Building, 2 Rumsey Street, Central, Hong Kong

Indonesia

Administration: Directorate General of Customs and Excise of Indonesia

According to the Customs Law Number 10 Year 1995, Customs has the authority to enforce intellectual property rights (IPR), protection rights at the border. The term IPR in Indonesia is limited only to trademark and copyright. The procedures are described in the Customs Law in Articles 54 - 64 which are based on the Trade Related Aspects of Intellectual Property Rights (TRIPS).

There are two approaches set out by the Customs Law, judicial and ex-officio. In the judicial approach, the owner of the right has to ask the Court to issue a written order to Customs to temporarily suspend the release of the specific goods suspected as infringing IPR. Upon the receipt of the written order, Customs will suspend the release of the goods for a period of ten days, during which the owner of the rights has to make legal action in the Court against the owner of the goods. If the ten days passed without the Court extending the period of suspension, Customs will release the goods.

Meanwhile, in ex-officio approach, Customs will make the suspension based on his own professional judgement. The owner of the rights as well as the owner of the goods will be advised of the action.

Full implementation of these articles is hampered by two factors:

- First, we still have no Government Regulation that is specifically required by Law for providing detailed procedures that would be used by Customs, the Court, owner of the rights and the owner of the goods. Detailed procedures are supposed to, for example, set the type and amount of security.
- Second, there is a conflict of jurisdiction. The "Court" referred to by Customs Law is District Court, while the new Trademark Law and Copyright Law assigns the Commercial Court to settle all matters relating to intellectual property rights disputes.

Facing the problems above, Customs tends to approach intellectual property rights issues using general customs enforcement procedures. Since most of the IPR cases are also cases of miss declaration or false declaration, this approach is working quite well.

Currently, the Government is in the process of amending Customs Law number 10 Year 1995. One of the proposed amended articles are those related to intellectual property rights. It is expected that once the amended Customs Law is passed, implementation of Customs enforcement will be in full speed.

In addition to the specific article concerning intellectual property, Customs also enforces Government Regulation concerning Optical Disc media. In this regulation, import of machines, tools, end products relating to optical disc can only be made by specific registered importers. The regulation is very effective in filtering the in flow of polycarbonate and the specific injection machines used by clandestine optical disc plants.

Japan

Administration: Japan Customs

It is stipulated in Article 69, Paragraph 8 of the Customs Law that goods shall not be imported which infringe on patent rights, utility model rights, design rights, trademark rights, copyrights, neighbouring rights, circuit layout rights and plant breeders' rights and which violate the Unfair Competition Prevention Law. The provision of Paragraph 2 of the same article states that the Director-General of Regional Customs may confiscate and destroy these goods or may order the importer of these goods to reship them(*).

Based on this provision, Japan Customs conducts law enforcement activities of Intellectual Property Rights (IPR) at borders. (Note*) Reshipment order has not been in practice in the recent years.

Enforcement system

The current law enforcement at borders (Customs control areas) deploys 133 officers in charge of IPR at the major Customs offices throughout Japan. Since January 1995, the law enforcement at borders has been conducted in the form of responding to the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Note: Having started enforcement on exportation of goods infringing plant breeder's rights in June 2006, Japan will begin to operate law enforcement on the exportation and re-shipment of goods which infringe patent rights, utility model rights, design rights, or trademarks and goods which violate the Unfair Competition Prevention Law such as goods which counterfeits the configurations in January 2007.

Specifically, law enforcement is done as follows:

Enforcement through application for import suspension

- Right holder of patent rights, utility model rights, design rights, trademark rights, copyrights, copyright-related rights or plant breeder's rights may lodge applications with the Director-General of Customs for import suspension, stating the type of the right involved, the name of the cargo which are recognised as infringing on the right and its reason, the desired period of effective application (less than two years) and attaching evidences attesting the fact of infringement (such as features of the genuine article and infringing article).

Specific procedure of lodging application for import suspension

- An application for import suspension is to be submitted to a special investigator for IPRs at the nine Regional Customs headquarters. However, an application for import suspension requests to be enforced in two or more regional Customs, should be filed in one of the Customs. The number of copies of the application for import suspension is at most nine copies, in case it is filed to the nationwide Customs.
- A certified copy of the official registration of the right, official gazette and a sample or a photo of the genuine goods and the infringing goods are to be attached to each application for import suspension.

Identification Procedure

- When Customs officials discover suspicious cargo, the importer and the relevant right holders are notified of the discovery, and the identification procedure begins. As a practical guideline, the procedure is to be completed within a month.
- The importer and the right holder can state their views on the respective cases by submitting evidences within 10 working days from the day after the notice of the beginning of the identification procedure. This 10 working day limit can be extended by a request from parties concerned with proper reasons.

- In cases where evidence submitted by the importer or the right holders or other evidence used in the identification procedure are to become the base of decision making, copies of this evidence shall be provided to the other party concerned in order for them to state opinions on the evidence.
- Inspections of the suspected cargo by the importer or the applicant of the relevant application shall be done within the Customhouses or bonded areas with the presence of officers in charge of IPRs.
- The applicant can conduct an overhaul inspection of samples of the suspected cargo for which infringement cannot be determined from their appearance under given conditions.
- In case the suspected cargo is identified as infringing IPRs or as not infringing, the decision by the Director-General of Customs and the reason are notified to the importer and the right holder.

In case the importer does not protest against the decision on infringement by the Director-General of Customs during the protesting period (two months), or in case he does not voluntarily dispose the infringing goods, they shall be confiscated and destroyed by the Customs.

Customs adopted a mechanism where the Customs consult experts, as appropriate, regarding the application for import suspension and the identification procedures.

Security for import suspension

- When opinions on suspected cargo of the applicant and importer contradict, seeming it difficult to identify whether it infringes IPRs or not, the Director-General of Customs orders to the applicant to provide a security or equivalent assurance sufficient to protect the importer within 10 days.
- The amount of the security to be deposited is to be computed by totalling the storage charge during the identification procedure, the loss of profit and other damages.
- The applicant deposits money, etc. in the closest official deposit place to the Customs, which has ordered the deposit.

Special measures for patent rights, utility model rights or design rights.

- The holder of patent right, utility model right or design right whose application was accepted, when the identification procedures are commenced for the goods relating to the application, within the period until the day when at most 20 working days accounted from the day when he received the commencement notification have passed, may request the Director-General of Customs to hear the opinion of the Commissioner of Patent Office with respect to the technical scope, in connection with whether or not the goods infringe his own patent right, utility model right or design right. The Commissioner of Patent Office shall give his opinion in writing within 30 days beginning from the day when he was asked for the opinion.
- In cases where the identification procedures have been carried out with respect to the goods relating to the import suspension application, the person who intends to import the said goods, may request the Director-General of Customs to discontinue the said identification procedures, after the day enumerated in the sub-paragraphs.

The importer of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement.

Special measure for plant breeder's rights

The Director-General of Customs hears the opinion of the Minister of Agriculture, Forestry and Fisheries when the Director-General of Customs considers it necessary in order to identify whether the goods infringe the said plant breeder's right. The Minister of Agriculture, Forestry and Fisheries shall give his opinion in writing within 30 days beginning from the day when he was asked for the opinion.

Republic of Korea

Administration: Korea Customs Service

In June 2005, Korea Customs Service (KCS) gave priority to Intellectual Property Rights (IPR) protection and drawing up "the Strategy for IPR Protection" for efficient and comprehensive enforcement:

- Protect the rights of consumers and businesses and build national credibility on IPR enforcement and protection;
- Upgrade Customs' capability for information analysis and risk management and strengthen partnerships with foreign Customs administrations and businesses;
- Build capacity of Customs officers and offer various incentives for high performance; and
- Expand Customs' authority for IPR enforcement.

Modernizing information analysis systems

In 2001, KCS established the Customs Data Warehouse (CDW), which was designed to collectively analyse internal and external data of foreign currency transactions, tax payment, and arrival/entry of cargo. In addition, KCS developed the Web-based Trademark Search System in 2002 where interested parties can search trademarks registered to Customs (e.g. trademark images and data on trademark holders) and information of parallel importation.

Upgrading risk management

KCS upgraded in December 2005 the Cargo Selectivity (C/S) criteria, which is a combination of 42 (9 in the past) data elements of import declaration. In addition, the C/S Research Centre developed the Rule-based System that field officers can add/delete a criterion on a real-time basis for overall Customs houses to perform better in selecting high-risk cargo. There is the Spider System, which is specifically designed to screen out IPR-violative imports/exports by analysing data of ex-infringers including traders, forwarders and warehouses.

Enhancing Customs to business cooperation

KCS has three types of Customs-Business cooperation programs: The Customs-Business Working Group to gather public opinions on policy making; the Intelligence Exchange Committee and the IPR Joint Investigation Support Team (JIST) for the purpose of information exchange on IPR infringement and joint enforcement activities with trademark holders. The JIST launched three joint operations between February and March 2006 using intelligence on IPR violations from trademark holders.

Furthermore, KCS introduced the Cyber Spider System (CSS) in February 2006 in order to eradicate counterfeits from cyber space.

Strengthening public IPR awareness

KCS has been making every endeavour to raise public awareness of IPR. For example, it has broadcasted Customs' IPR protection and enforcement activities for two years through prime-time TV shows of KBS. In addition, KCS has opened the Cyber Intellectual Property Protection Centre (<http://iprcenter.customs.go.kr>) and held large-scale exhibitions of counterfeit and genuine goods annually in major cities along with the cyber exhibition (<http://fake-expo.customs.go.kr>).

Building Customs officers' capacity

KCS has held contests for Customs officers on best practices of risk management and IPR enforcement to promote and share best practices. Furthermore, Customs regularly invites trademark holders to Customs to educate officers on how to distinguish fakes from genuine goods.

Reinforcing international cooperation

Since February 2006, KCS has requested 24 foreign Customs administrations to provide information on Korean traders identified as counterfeit exporters to crackdown on Korean counterfeiters. In addition, KCS hosted the International Conference on Customs Protection

and Enforcement of IPR on April 19 2006 in Seoul, Korea, which was to provide a venue for the global Customs and business community to discuss ways to stop counterfeiting.

Refining pertinent legislation

KCS has expanded its authority by adding provisions stating that Customs may, on its own initiative, suspend clearance of even the goods whose trademarks are NOT registered to Customs and that Customs shall provide digital photos of potential IPR-violating goods to trademark holders, thereby reflecting WCO IPR model legislation.

Special Operation C.C.C.

Based on the Strategy for IPR Protection in 2005, KCS set up the Special Enforcement Headquarters made up of 446 officers (over 10% of total KCS staffs) and launched Operation C.C.C. from 1 February to 30 April 2006, which stands for the Catcher of CopyCats and counterfeits serving consumers, companies and the country, expressing its strong determination to root out counterfeits from Korea. With Operation CCC, KCS made 159 seizures (an 83% increase year-on-year) worth USD 304 million.

IPR Contact Details of the Republic of Korea

Email: gccho@customs.go.kr
Website: www.customs.go.kr
Phone: 042-481-7638
Fax: 042-481-7753
Contact: Cho Ghy-Chan, Deputy Director, Korea Customs Service
Address: Government Complex Daejeon,
920 Dunsan-dong Seo-gu Daejeon 370-701, Korea

Malaysia

Administration: Royal Malaysian Customs

The competent Authority for Intellectual Property Rights (IPR) enforcement in Malaysia is the Ministry of Domestic Trade and Consumer Affairs. The Royal Malaysian Customs is enforcing IPR under the ex-officio capacity as provided for under the Trade Marks Act 1976 - section 70C to 70O.

As far as border measures are concerned, the Royal Malaysian Customs is authorised to detain goods (suspicious of infringing or counterfeit), provided a complaint is lodged to the Registrar of Trade Marks under the Ministry of Domestic Trade and Consumer Affairs and also acted under ex-officio capacity that the officer suspected the goods to be counterfeit or infringed.

IPR Contact Details for Malaysia

Email: habsah@cic.customs.gov.my
Website: www.customs.gov.my
Phone: +603-8882 2716
Fax: +603-8889 5872
Contact: Ms. Habsah Harun
Address: Royal Malaysian Customs
Enforcement Division
Level 3, North Block
Ministry of Finance Complex
Precinct 2
Federal Government Administrative Centre
62592 Putrajaya
Malaysia

Mexico

Administration: Administration General of Customs

Mexican Customs authority administers the import and exports of goods, including those protected by Mexican Industrial Property Law.

Industrial Property Law and Customs Law, as well, give Customs the right to detain infringing goods while the IP right holder has valid grounds for suspecting that a shipment may contain counterfeit and/or pirated goods and will cross the border, he/she shall require (IMPI) to issue a resolution for the suspension by the customs authorities of the release into free circulation of such goods. IMPI shall determine if there is or is not an IPR infringement. According to Mexican Industrial Property Law (**articles 227 and 228**), and Customs Law (**article 144, XXVIII**), judiciary authorities are competent to adopt **provisional measures** for the suspension of the release into free circulation of goods.

According to **article 199bis** of Mexican Industrial Property Law, in administrative declaration procedures regarding the violation of any of the rights protected by the Law, IMPI may order **provisional measures** such as: the withdrawal from circulation or ban the distribution of merchandise that infringes such rights as protected by Mexican Law; and also may order the withdrawal from circulation of objects manufactured or used illegally; objects, wrappers, containers, packaging, paperwork, advertising material and similar articles that infringe any IPR; signs, labels, tags, paperwork and similar articles that infringe any IPR; and implements or instruments intended or used for the manufacture, or production of any of the articles mentioned in items specified above.

According to the Customs Law, the Ministry of Treasury will have, among others, the following faculties (**article 144, XXVIII**): to suspend the release of foreign goods inside the fiscal place, once activated the random selection; previous resolution **issued by the administrative or judicial authority on intellectual property** and put them at immediate disposal in a place indicated by the authorities. Article 148 and 149 of this same Law gives administrative authorities the power to suspend and proceed against infringers.

IMPI may initiate an **administrative declaration** procedure ex officio or at the request of a Party who has legal interests therein and provides grounds for the claims. This administrative declaration might be issued for the purpose of detaining shipments at customs offices. When the declaration is issued on the grounds of **request of a party**, that party shall file before IMPI an administrative declaration of infringement making statement to that effect and submitting evidence.

Before ordering any provisional measures, such as detention of goods, IMPI requests the petitioner, among others: to provide evidence that he/she is the right holder and there is a violation of his/her rights; to provide information for the identification of the goods that supposedly infringe industrial property rights; to provide a bail to cover any damages that might be caused to the person against whom the measure is sought. In addition, the party requesting the provisional measures referred to in Article 199bis shall be liable for any damages caused to the person against whom the measure is requested when: (i) a firm court decision in the sense that no violation or threat of violation has been committed against the requester of the provisional measure, and (ii) the provisional measure has been requested and the procedure of administrative declaration of infringement regarding the substance of the controversy has not been started before the competent authority or before the Institute, within a period of 20 days from the date of execution of that provisional measure

IPR Contact Details for Mexico

Email: jamigo@impi.gob.mx
Website: www.impi.gob.mx
Phone: (00 52 55) 5624.0401 & 02
Contact: Mr. Jorge Amigo, Director General
Address: Av. Periférico Sur N o 3106
Col. Jardines del Pedregal
C.P. 01900, México D.F.

New Zealand

Administration: New Zealand Customs Service

New Zealand introduced border protection measures for imported infringing trade marked and pirated copyright goods on 1 January 1995.

Currently, the border protection measures are contained in the Trade Marks Act 2002 and in the Copyright Act 1994 and comply with the requirements of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

New Zealand's legislation requires that if a rights holder wants protection at the border, they must apply to the New Zealand Customs Service for a Border Protection Notice (Customs Notice) by proving ownership of a copyright work, or a New Zealand registered trademark. Border Protection Notices allow Customs to detain any infringing trade marked or pirated copies of the items that are in or at any time come into the control of Customs.

Border Protection Notices are renewable and are valid for up to five years from the date of notice. In the case of trademarks, if the registration of the trademark to which the notice relates will expire within the period of five years, from the date of the notice, the notice is valid for no longer than that period for which the current registration will last. In the case of copyright, if the copyright on the work to which the notice relates will expire within the period of five years from the date of the notice, the notice will last for no longer than the period for which the copyright will last.

When an application for a Border Protection Notice is accepted by the Chief Executive of the New Zealand Customs Service, Regulations made pursuant to the Trade Marks Act 2002 and the Copyright Act 1994 require every person giving notice under those Acts to provide a security or an indemnity or both to Customs. It has been determined that persons giving notices under the Trade Marks or Copyright Acts must provide Customs with a security of \$5,000 and complete a form of indemnity.

The purpose of the security and indemnity is to ensure that Customs is protected against action taken under a notice and to prevent the abuse of the legislative provisions by rights holders. The \$5,000 security is returned to the applicant at the end of the notice period **if** Customs has not had to use any of it to cover related costs; for example the transport and storage of goods. It is very important to note that Customs may only enforce the border enforcement provisions to the Trade Marks Act 2002 and the Copyright Act 1994 where:

- a Border Protection Notice has been accepted by Customs; and
- the goods have been imported and are in the control of Customs.

The New Zealand Customs Service has no influence over counterfeit and or pirated goods once they have cleared Customs.

The Process Applied When Goods Suspected to be Infringing are Located

Where a Border Protection Notice has been accepted by Customs and the goods are under Customs control, Customs will conduct an investigation to establish whether or not the goods appear to infringe the rights holder's trademark or copyright.

In undertaking this investigation Customs may require the rights holder or any person having an interest in the goods to supply such information in order to determine if the goods infringe the trademark or copyright in question. This information must be supplied to Customs within 10 working days of the request.

Customs must, within a reasonable period of time of forming an opinion that the goods in question infringe upon a registered trademark or copyright, make a determination of such. A written notice of determination must then be served on the rights holder and any other person having an interest in the goods, for example the importer, advising the outcome of the investigation.

Goods covered by a determination are detained by Customs for no more than 10 working days. If Customs has not during this 10-day detention period, been served by the Rights Holder with a notice of Court proceedings, the goods must be released by Customs to the importer.

During this detention period any person having an interest in the goods, for example the importer, may apply to the Court for an order that the notice has been discharged or the goods are to be released or that the goods are not counterfeit or pirated and they are not covered by the notice.

Customs will then deal with the goods in accordance with the decision of the Court.

The 10 working day detention period may, on application to Customs, be extended under exceptional circumstances to no more than 20 working days.

In the case of infringing trade mark and/or copyright goods the importer or consignee may, by notice in writing to Customs, at any time during the detention period consent to the goods being forfeit to the Crown. This usually occurs in about 90% of the cases that Customs currently deals with.

The Trade Marks Act 2002 and the Copyright Act 1994 do not provide for Customs to take ex officio action against imported infringing trademark or pirated copyright goods. Ex officio action essentially means that the government would authorise Customs to detain goods where there is prima facie evidence that an intellectual property right is being infringed, without the need of a specific complaint. In this case a complaint being a Border Protection Notice. Having detained the goods, the process Customs would follow would probably be similar to the existing process it undertakes when a Border Protection Notice has been accepted.

Customs does not have any authority to order any remedies regarding the importation of infringing trademark and pirated copyright goods. However, the Courts may order that goods be:

- forfeited to the Crown; or
- destroyed; or
- otherwise dealt with as the Court thinks fit.

It is important to note that the Trade Marks Act 2002 and the Copyright Act 1994 provide that Border Protection Notices do not apply to genuine private importations for domestic use. For example if a private individual goes overseas and purchases a counterfeit item which is of a brand covered by a Border Protection Notice and that item is for that person's own personal use, Customs will not detain the item.

If similar items are purchased overseas but are to be given to friends, family or staff as gifts, then the private and domestic criteria cannot apply and Customs can detain the goods.

IPR Contact Details for New Zealand

Email: Terry.Brown@customs.govt.nz
Website: www.customs.govt.nz
Phone: +64 9 359 6547
Contact: Terry Brown, Manager, Investigations
Address: New Zealand Customs Service
50 ANZAC Avenue
Box 29
Auckland
New Zealand

Papua New Guinea

Administration: Papua New Guinea Customs Service of the Internal Revenue Commission

The PNG Parliament passed a Copyright and Neighbouring Rights Act for PNG in 2000 thus paving the way for legal recognition and enforcement of Intellectual Property Rights (IPR) in Papua New Guinea, particularly in respect of Copyright and Neighbouring Rights as well as enhancing the Trademarks Act.

In November 2005, Parliament also passed amendments to the Customs Act by introducing Part VI entitled “ *The Importation of Goods that Infringe Upon Intellectual Property Rights*” to the *Customs (Prohibited Imports) Regulation*. The result is that it now enables Customs to enforce the border aspects of the WTO TRIPS Agreement.

The Regulation allows holders of IPR to apply to Customs for suspension of clearance or detention of goods either imported, in transit or for export that infringe upon those rights.

Suspension of Clearance is for a period of 10 working days, which may be extended for a further period on application.

Customs is also empowered to take action on it's own initiative where there are reasonable grounds to suspect that any goods may be infringing goods.

It will be a while before we set up the administrative infrastructure within Customs Enforcement to effectively deal with IPR in PNG, even though discussions with the PNG Intellectual Property Office and other stakeholders are at an advanced stage regarding the issues involved.

Peru

Administration: National Institute for the Defense of Competition and the Protection of Intellectual Property – Indecopi

Indecopi's Copyright Office and Trademark Office deal with the protection of copyrights and trademarks from counterfeit, piracy or unauthorized importation, respectively. In this regard, the Copyright Office may apply caution measures to stop illicit activities. The Office is allowed to confiscate goods in which illegal reproduction has taken place, as well as other materials or means used for illicit acts. Peruvian Copyright Law establishes higher standards than the ones in WIPO Berne and Rome Conventions and in WTO Trade Related Aspects of International Property Rights (TRIPS). Our legislation introduces concepts for exploitation and exclusive use rights, including the possibility for the copyright holder to implement technological protection measures to avoid unauthorized exploitation. The Copyright Office may begin procedures, by administrative initiative or by third party initiative, when copyright legislation is infringed, having enough attributions to repress illicit acts.

The Trademark Office is in charge of registering trademarks and protecting IPRs derived from those registrations. For this reason, the Office organizes several activities, some of which have the purpose of fighting counterfeiting. They may also initiate procedures by administrative initiative or by third party initiative to repress illicit acts. Statistics from the last five years show that each year the Trademark Office receives more files regarding denunciations of infringements. In 2001 there were 255, whilst in 2005 there were 486. There has also been an increase in the number of technical reports requested by the Judiciary. In 2001, 144 reports were requested, whilst in 2004, there were 345. These increases are mostly due to activities organized to fight the counterfeiting of trademarks, as well as other activities made by administrative initiative. For 2006, the Trademark Office has planned the prosecution of unauthorized use of trademarks; the Office has selected ten places in which there is a huge concentration of these activities where inspections will take place. The Trademark Office will also organize seminars so that more people may be aware of the importance of intellectual property rights.

Regarding frontier measures, Indecopi has an agreement with the Customs authority in order to detect copyright and trademark infringement cases. Intervention activities may take place in order to verify, prove or discard the existence of goods, which infringe the copyright or trademark legislation. To participate actively in these inspections, Indecopi must accredit inspectors, which will participate together with customs personnel in the verifications.

The Customs authority determines which shipments must be inspected. For this matter, they consider certain issues like: tariffs, country of origin, suppliers profile, importers profile and payment options. After this, the Customs authority proceeds to the electronic immobilization of the load in the storage terminals and then it verifies the goods. If an infringement is detected, the Copyright Office or the Trademark Office must request a caution measure to immobilize the products. This measure will be executed as soon as the customs procedures end; this is, when the goods have been nationalized and the immobilization requested by the Customs authority is declared over. In case no inspector from Indecopi is present, the Customs authority will communicate Indecopi about the immobilizations made.

Statistics of our Copyright Office show that in March 2006, seven inspections were made. Confiscated goods were valued at approximately US\$ 170,000. These products were mainly clothing, backpacks, towels and stationery products. In April 2006, only three inspections took place. Confiscated goods were valued at approximately US\$ 16,000. In this case, the product categories were clothing, TVs and accessories.

Regarding the Trademark Office, 49 inspections took place in 2005. Confiscated goods were valued at approximately US\$ 578,500; these products were mainly toys, paper, cardboard, cigarettes, backpacks, stationery and chemical products. From January to April 2006, there were 24 inspections. Product categories were mainly clothing, toys, shoes, towels, DVDs and stationery products. These products were valued at approximately US\$ 1.343.000.

The Russian Federation

Administration: Russian Customs Service

Regulation on Protection of Intellectual Property Rights (IPR) by Customs Authorities (hereinafter referred to as the "Regulation") has been elaborated on the basis of the customs legislation of the Russian Federation and laws of the Russian Federation on intellectual property, as well as on the basis of international treaties to which the Russian Federation is a party and other commitments of the Russian Federation for the purpose of protecting IPR and counteracting illegal carriage of goods containing objects of intellectual property across the customs border of the Russian Federation (hereinafter referred to as the "customs border").

In accordance with the Customs Code of the Russian Federation (hereinafter referred to as the "Code"), the Regulation stipulates a unified procedure for ensuring the protection of IPR by the customs authorities, including the procedure for filing applications for action to suspend release of goods, requirements in respect of the content of such application depending on the type of intellectual property and the procedure for maintaining the register of intellectual property objects.

The rightholder has the right to file an application for action to suspend the release of only those goods which contain objects protected by copyright and related rights, trademarks, service marks, appellations of origin and in respect of which the rightholder has valid grounds to suspect that carriage of such across the customs border or any other operations with such goods under customs control may entail violations of the exclusive rights of the rightholder under the laws of the Russian Federation on intellectual property (hereinafter referred to as "suspected counterfeit goods").

Customs authorities shall take measures to suspend release of suspected counterfeit goods on the basis of the application filed by the rightholder or his representative.

Measures to suspend release of suspected counterfeit goods shall be taken by the customs authorities in the course of carriage of or other operation with the goods being under customs control.

According to Article 360 of the Code, goods imported into the customs territory of the Russian Federation shall be considered to be under customs control from the moment of crossing the customs border when entering the customs territory of the Russian Federation until:

- release thereof into free circulation;
- destruction thereof;
- renouncement of the rights thereto for the benefit of the state;
- transfer thereof to federal ownership or disposal in any other way in accordance with the customs laws of the Russian Federation
- such goods and means of transport actually leave the customs territory of the Russian Federation

Russian goods and means of transport shall be considered to be under customs control in the course of exportation thereof from the customs territory of the Russian Federation from the moment the customs declaration is accepted or other action aimed at exporting the goods from the customs territory of the Russian Federation is taken and until crossing the customs border.

Measures to suspend release of suspected counterfeit goods shall be taken by the customs authorities regardless of the declared customs regime or any other customs procedure under which the goods are placed.

Measures taken by the customs authorities to suspend the release of suspected counterfeit goods shall not prevent the right-holder from protecting his rights under the laws of the Russian Federation.

For the purpose of providing protection of IPR, methods of risk analysis can be applied in order to determine goods, documents and natural persons subject to inspection, as well as the extent of such inspection.

Singapore

Administration: Singapore Customs

Singapore's Intellectual Property Rights (IPR) enforcement regime complies with the requirements of the World Trade Organization Agreement on the Trade Related Aspects of Intellectual property Rights (TRIPS).

Our legal system provides both civil and criminal avenues for the enforcement of rights of IPR owners. Civil action enables the IPR owners to seek damages, injunction against further infringement and the surrender of infringing items. Criminal proceedings may also be initiated against the offenders by way of fiats issued by the Attorney-General's Chambers. The additional liberty of IPR owners to pursue private criminal action in an IPR suit is a TRIPS - plus provision, demonstrating the importance Singapore places on the rights of IPR owners.

The Intellectual Property Office of Singapore (IPOS) is the lead government agency that formulates and administers Intellectual Property (IP) laws, promotes IP awareness and provides the infrastructure to facilitate IP development in Singapore.

The Police Intellectual Property Rights Branch enforces inland retail-level piracy while Singapore Customs, together with the Immigration and Checkpoints Authority whose officers are vested with the powers of Customs officers, is responsible for border enforcement.

Previously, Singapore Customs' responsibilities on IPR border enforcement were in respect of the importation of goods infringing copyrights and trademarks into Singapore for local consumption, via a lodgement of notice system.

In 2004, the Border Enforcement Measures of the Trade Marks Act and the Copyright Act were enhanced to include ex-officio border enforcement action on imports, exports and re-exports (transshipment with local consignee). Both the lodgement of notice system and the ex-officio system now run concurrently.

Under the lodgement of notice system, the rights owner is required to formally lodge a complaint to Singapore Customs about a particular shipment before the border authorities detain the shipment at the border.

Under the ex-officio approach, border authorities can detain suspected IPR-infringing items without the need for any formal complaint.

IPR Contact Details for Singapore

Email: Customs_International@customs.gov.sg
Website: www.customs.gov.sg
Phone: (65) 6355 2086
Fax: (65) 6250 8663
Contact: Head International & Planning
Address: 55 Newton Road, #10-01 Revenue House, Singapore

Chinese Taipei

Administration: Taiwan Customs Service

Taiwan Customs authority enforce border measures based on the articles 65 to 67 & 82 of Trademark Act, article 90-1 of the Copyright Act, article 15 of the Customs Act and article 39-1 of the Anti-smuggling Act. These provisions comply with the WTO Agreement on Special Requirements Related to Border Measure by Trade Related Aspects of Intellectual property Rights (TRIPS Article 51 to 60).

The present border measures taken by the Taiwan Customs are as follows: "Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent, Trademark, and Copyright", "Export Monitoring System of Trademarks", "Inspection for Exports of Audio-visual Copyrighted Works and OEM Audio CDs", "Operational Directions for the Enforcement Taskforce against Export of Pirated Optical Disks, Inspection System on Optical Disk Manufacturing Implement and Optical Disks" and "Inspection System on Export Chip Products with Mask-ROM".

The Taiwan Customs enforces effective border measures pursuant to the "Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent, Trademark, and Copyright" that entered into force on 1 July 2003. The right holders may submit complaint or advice applications to Customs to protect their rights. It was amended and promulgated on 1 June 2005, allowing the Customs to take *Ex-Officio* Action.

In order to tackle the development of infringing activities, the Customs had workshops on the verification of genuine and counterfeiting goods for the purposes of promoting cooperation of right holders and upgrading the professional ability of officers.

Further, the Customs heightened the sharing of intelligence and information through cooperation with foreign Customs authorities and domestic enforcement units to stop exports/imports of counterfeit and pirated products. Also, the Customs has adopted a risk management policy to enhance the intelligence exchange system to provide Customs officers with the most up-to-date information. We have been providing real-time seizure intelligence of IPR reported to foreign customs from 2006. We expect that through exchange of information regarding Customs seizure cases on counterfeit and pirated good that we can foresee the trend of infringing activities and illegal trade models.

The Taiwan Customs will continue effective border enforcement and cooperate with APEC economies to crack down on counterfeits and pirated products.

IPR Contact Details for Chinese Taipei

Email: iis@webmail.customs.gov.tw
Website: www.web.customs.gov.tw
Phone: +886-2-25508096
Fax: +886-2-25508036
Contact: Director, Department of Investigation
Address: No.13, Tacheng St., Taipei City 10341, Taiwan

Thailand

Administration: The Royal Thai Customs

Thailand has participated in the protection of Intellectual Property Rights for a long time by becoming a member of Berne Convention relating to the protection of copyright since 17 July 1931, and has become a member of the World Trade Organization (WTO). Thus, Thailand is committed to protecting intellectual property rights in conformity with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP), which contains the special provisions relating to protection of intellectual property rights in the aspect of Trademark and Copyright at point of entry and exit. Moreover, in Thailand, The Royal Thai Customs enforce IPRs at the point of entry and exit, and the Police department and IP department are responsible for domestic IPRs enforcement. At July 2006, IPR is an important issue in trade negotiations on FTAs between Thailand and other countries by raising the topic of IPR as one of the important issues in the negotiation.

Thai legislation Related To IPRs

The Royal Thai Customs has the authority to settle cases where infringements are found. Under these regulations, an offender can receive a maximum sentence of ten years imprisonment. Other types of regulations which can be deployed include TRIPs Agreement, (especially Articles 51-60 concerning border measures), Customs Act 1926, Export and Import of Goods Act 1979, Trademark Act 1991, Copyrights Act 1994, Customs Announcement No. 6/1988 and No. 28/1993, Customs Act and Customs Code 2001, and Memorandum of Understandings (MOU), etc. In order to solve the smuggling problem of IPR infringing goods in line with the Government policy, The Royal Thai Customs jointly signed MOU with public and private sector with a view to adjusting the role and performance of relevant government agencies to work together to fulfill the common goal.

Memorandum of Understanding (MOU)

Objectives:

- 1) To facilitate effective cooperation between government agencies and the private sector to prevent and suppress the smuggling of IPRs infringing products by strictly utilizing all the relevant laws.
- 2) To strictly enforce the existing laws and regulations with regard to IPRs protection to increase the effectiveness and efficiency of the IPRs enforcement.
- 3) To collaborate in identifying new measures to create more complete and systemic mechanisms in suppression of IPRs infringement.

Function and Scope of Activities:

- 1) Where the Customs suspects that a shipment may have been smuggled, it shall inform the IPRs owners to inspect the goods. In order to detain suspected products, the IPRs owners shall file request to The Royal Thai Customs for the detainment of the goods for 10 days. The IPRs owner shall be required to pose a security deposit with the Customs and to guarantee in writing that they would be responsible for possible damages from detainment.
- 2) In cases of Customs lacking the authority to carry out inspection on its own, IPRs owners shall cooperate with the police in order to inspect products and arrest the wrongdoers under all relevant laws.
- 3) Every agency shall take all necessary legal actions against smugglers under the relevant laws.

- 4) The IPRs owners and The Royal Thai Customs shall set up operation units to inspect the exportation and importation of products at customhouses deemed to have high risk of smuggling. Both representatives of the IPRs owners and the customs officers shall sign their names as evidence of their operation.
- 5) Private and public sectors shall set up another operation unit to follow up on the results of cases and proceed to arrest the actual wrongdoers.
- 6) The Royal Thai Customs shall proceed to destroy the counterfeit and pirated products. Prior to the destruction of such products the Customs shall check against the actual number of seized goods and ensure that they are all destroyed. Unless there are adequate customs warehouses available for storing suspected products, the IPRs owners whose rights are infringed shall grant a financial support for the expenses of storing the products.
- 7) The IPRs owner shall provide computer program in support of the operation.
- 8) There shall be a linkage of databases between those of the Department of Intellectual Property and the Customs Department. IPRs owners agree to provide a financial support for any expense incurred as a result of the establishment of the databases.
- 9) A database on exporters and importers involved in IPRs related crimes shall be created by the Customs, so that inspection of their shipments can be done thoroughly and vigorously. The IPRs owners shall provide additional data concerning IPRs infringing suspected known to them.
- 10) The IPRs owners shall issue IPRs certificates to both exporters and importers of IPRs products. Such certificates should contain information such as shipment duration and quantity.
- 11) The Royal Thai Customs shall put in place a registration system against which IPRs product exports and importers can be traced and checked.
- 12) Export and import documents shall contain information such as description of products, brand name/trademark, and origin of products. Such documents shall be available for checking.
- 13) There shall be training or seminars for relevant officers on intellectual property matters such as IP laws and identification of pirated or counterfeit products etc. organized by both private and public sectors.

Application of Risk Management

Risk Management is a core principle applied in the detection and seizure process. This principle is used to identify high risk and low risk shipments as well as to identify counterfeiting. This effective method assists Customs in the clearance process regardless of the origin or exporter of the goods.

Deployment of Technology to Detect IPR Infringement

An X-ray machine is utilized in cargo inspection. Also bar coding, CCTV and GPS are used in the prevention and suppression on IPR violation. This will assist in the detection of infringements more quickly and efficiently.

Statistics of IPR Infringing Goods Seized By The Royal Thai Customs

Fiscal Year	Number of Cases	Quantity (Piece)	Value (Baht)
2003 (1 Jan 2002 - 30 Sep 2003)	19	251,577	8,465,867.-
2004 (1 Oct 2003 – 30 Sep 2004)	111	1,394,646	114,277,450.-
2005 (1 Oct 2004 – 30 Sep 2005)	141	1,493,248	37,175,282.-
2006 (1 Oct 2005 – 30 June 2006)	277	932,971	34,515,826.65

Remark: In the fiscal year 2004, the seizure was very high due to the seizure of cigarettes “Marlboro” in quantity of 448, 500 packages, total value of 88,456,899 Baht.

The Royal Thai Customs has received recognition from major international companies. It has been publicly recognized by a French manufacturer Louis Vuitton, as well as by the agents of Burberry (England) and Christian Dior (France). Furthermore, The Royal Thai Customs administrators have received an award from Finland's Nokia in appreciation of their efforts. The Director General has also been given special thanks from visiting representatives of various Japanese companies such as Epson, Casio and NGK Spark Plugs for Customs IPR enforcement.

United States of America

Administration: U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) is an administrative agency with the legal authority, under the Tariff Act of 1930, the Lanham Act of 1946 and the Copyright Act of 1976, to make infringement determinations regarding federally registered trademarks and copyrights. Although CBP has no legal authority to make patent infringement determinations, it does have the authority to exclude from entry into the United States goods that the U.S. International Trade Commission has determined to infringe a valid and enforceable U.S. patent.

Through its enforcement powers combined with its administrative authority to make trademark and copyright infringement determinations, CBP is able to combat the flow of counterfeit and piratical goods into the United States. CBP may, on its own accord, initiate enforcement actions to detain or seize infringing merchandise, or alternatively, it may proceed on the basis of information supplied by rights owners. Enforcement actions represent the combined efforts of many disciplines within CBP. In some instances, intellectual property rights (IPR) enforcement actions may also be undertaken in cooperation with other Government agencies.

Rights owners may record their trademarks and copyrights with CBP. CBP's IPR recordation system, as embodied in its electronic IPR database, was designed to make IPR information relating to imported merchandise readily available to CBP personnel. CBP enforces both recorded and non-recorded trademarks and copyrights; however, enforcement of recorded trademarks and copyrights takes precedence over those that are not recorded with CBP.

Operationally, within CBP, IPR border enforcement is integrated into the work of multiple offices. The three primary offices are the Office of Strategic Trade, the Office of Field Operations, and the Office of Regulations and Rulings. Several additional CBP offices are involved in supporting roles: the Office of International Affairs, Laboratories and Scientific Services, a division of the Office of Information and Technology, and the Office of the Chief Counsel. CBP provides diverse training for its officers, enabling them to address multiple issues involving national security, narcotics interception, and trade enforcement priorities such as IPR.

CBP's National Trade Strategy directs actions and resources around priority trade issues, including IPR enforcement. The results-oriented strategy includes measurable objectives quantified via diverse measures.

Under this strategy, CBP is implementing a new and innovative IPR risk model that uses several sources of data, including statistical analysis of historical seizure information, to target high-risk shipments while facilitating the flow of legitimate goods. This model builds on and expands CBP's existing targeting methods. These include several computer programs, review of paper documents, visual inspection of the outside of packages, warehouse sweeps, and leads and allegations from external sources. Computer programs are used to target commercial shipments at seaports, airports, land borders and express consignment facilities, while visual review of packages is used for mail, most express consignment shipments and items carried by passengers.

With post-entry verification, or IPR audits, CBP added a new IPR enforcement tool to complement traditional physical examination and seizure of goods at the border. By making use of auditors that are expert in corporate finance and internal controls systems, CBP is focusing on importers, their multinational financial transactions, and business practices linked to counterfeiting and piracy. CBP is issuing penalties on imports of IPR infringing goods uncovered during IPR audits, and is working with businesses to develop internal control systems to prevent imports of IPR infringing goods.

When CBP's officers examine a shipment and suspect IPR infringement, a variety of resources are available to aid them in determining infringement. Officers may research the CBP online IPR recordation database which contains information on all intellectual property rights recorded with CBP; consult with specialized CBP IPR attorneys or the right holder; refer to right holder product identification training guides; compare suspect merchandise with genuine articles provided by the right holder or obtain a CBP laboratory analysis.

IPR Contact Details for the United States of America

Email: therese.randazzo@dhs.gov
Website: www.cbp.gov
Phone: 202-863-6001
Fax: 202-863-6060
Contact: **Ms. Therese Randazzo**
Address: U.S. Customs and Border Protection
Office of Strategic Trade
1300 Pennsylvania Ave, NW
c/o 1400 L Street, Room 1107
Washington, DC 20229

Viet Nam

Administration: Viet Nam Customs

Legal framework for IPR

Section 5, Chapter 3, Law on Customs stipulates that holders of intellectual property rights already protected under the Vietnamese law shall have the right to request the Customs offices to temporary stop carrying out the Customs procedures for export or import goods which they have grounds to believe that their intellectual property rights are infringed upon. The Customs officers may decide to temporary stop carrying out customs procedures for export and import goods only when stipulated conditions are met. Those provisions are complied with those as stipulated in TRIPS Agreement of WTO.

Chapter IV of Decree 154/2005/NDD-CP dated 15/12/2005 regulating in detail on customs procedures, supervision and control stipulated on the Customs Law and Section 3 of Joint - Ordinance Number 58/2003/TTLT-BVHTT-BTC dated 17 October 2003, guiding enforcement of copyright protection at Customs Administration, providing detailed regulations on the contents and process of IPR protection activities of Customs Administration in term of imported, exported goods, as follows:

- The holders of rights shall have to send written requests accompanied by evidence of their legitimate ownership of IPR (for long term or case by case basis) and pay a deposit (about 20% of the shipment's value) or credit guarantee as security for payment of damage compensation and expenses, as described by law, which may arise due to wrong request for temporary postponement of customs procedure completion.
- Customs Administration checks dossiers and certifies the approval of application for IPR protection. Based on the request and evidence, Customs Administration checks suspected goods for final conclusion on IPR violations.
- Head of Customs checkpoint may decide to temporarily stop proceeding Customs procedures for exported or imported goods and notify the goods owner and requester. Duration for Customs procedures postponement is 10 days and may be extended to a maximum 20 days, if requester agree to pay all the required deposit.
- When the abovementioned duration expires without findings or conclusion of competent authority or court, made by requester, Head of Customs Checkpoint will decide on goods clearance and release; request the payment of requester for arising expenses for wrong request of Customs procedures postponement. Customs Administration will calculate and transfer refund to shipment's owner.
- If the shipment is demonstrated to violate IPR, owner and shipment are subject to be treated as provided for in legislations.

Detailed activities:

- Establish specialized task forces on IPR at Customs departments nationwide.
- Implement IPR enforcement activities at every checkpoints.
- Consult and solve difficulties of business.
- Organize training courses on IPR for customs officers and businesses.
- Hold workshops to enhance capacity building for customs officers and public security officers who are major in IPR.
- Cooperate with relevant government agencies for effectively implementation of IPR protect methods.
- Cooperate with foreign customs administrations in IPR field such as: dispatch officers for training courses or workshops in foreign countries, share information and experience, search for funds, cooperate in investigation to protect industrial property right and and fight against fraud.

IPR Contact Details for Viet Nam

Email: vncustoms-enf@hn.vnn.vn
Website: www.customs.gov.vn
Phone: 84 4 8722828/ 84 4 8726201
Fax: 84 4 8720292/ 84 4 8730400
Contact: Mr. Mai Xuan Thanh – Deputy Director of Investigation and Anti-smuggling
Dept General Department of Viet Nam Customs
Address: 162 Nguyen Van Cu – Long Bien – Ha Noi

Prepared By
Australian Customs Service
5 Constitution Ave
Canberra City ACT 2601
Australian Customs Service
Email: information@customs.gov.au
Website: www.customs.gov.au

FOR THE ASIA-PACIFIC ECONOMIC COOPERATION SECRETARIAT
35 Heng Mui Keng Terrace Singapore 119616
Tel: (65) 6775-6012 Fax: (65) 6775-6013
Email: info@apec.org
Website: www.apec.org

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APEC#206-CT-01.4