

DRAFT

WCO Action plan dedicated to the fight against Counterfeiting and Piracy

Introduction

The health and safety of consumers around the world and creation, research and innovation, competition and security of employment in many sectors of the economy are all affected by counterfeiting and piracy which have now developed into fraud on a global scale that spares nothing and nobody.

To this problem of diversification there should be added that of the routes followed by the articles that infringe intellectual property rights (the problem of purchases made on the Internet and delivered by postal or courier services), together with the problems created by the new techniques developed by transborder organized crime to evade controls.

To counter the development of these phenomena and tighten their grip on them, Customs administrations should respond by developing the quality of their controls.

Although most of the counterfeit or pirated products intercepted are intercepted by the world's Customs administrations, those administrations will not be able to meet the challenge of the "Fake" without the full and whole-hearted assistance of the right holders. It is within the framework of this public sector/private sector co-operation, with the support of the political decision-makers, and by developing the best Customs practices that the WCO intends to lay the foundations for this new approach.

The urgency of the situation calls for a global proactive response, at both policy and technical levels; however, this response must, above all, be proportional to the seriousness of the threat.

The World Customs Organization should now initiate this new policy designed to ensure that Customs administrations can benefit not only from the most favourable possible legislative environment but also from the introduction of effective control techniques, while simultaneously ensuring that the anti-counterfeiting campaign does not cost the right holders more than the counterfeiting itself.

This new and resolutely pragmatic policy should make it possible to achieve optimum results, while avoiding adverse effects on lawful trade at the borders.

Activity 1. Improving the efficiency of legislative provisions

Current situation

The various reports on the meetings of the WCO IPR Group (Customs experts and right holders) are evidence of the amount of work that has been done and its quality.

The “model national” legislation that has been developed is of a high standard, even though it may need adapting as the traffic evolves.

The only cause of regret is that today, after several years of discussion among the experts of the WCO IPR Group and several meetings to draft that legislation, only one Member out of 169 has introduced and is implementing it.

(We have some concerns about the way this sentence might be perceived. Many members already have legislation that compares favourably with the Model Law. Still others have likely used the Model Law as a reference in improving their existing legal provisions. Few countries today have no IP laws at all and would be in a position to adopt the Model Law in its entirety)

It should be pointed out, however, that the aim of many of the initiatives taken has been to improve and facilitate access to the Customs legislation for the right holders.

Although this gives cause for satisfaction and although the simplification of the procedures should be a constant priority, it is also essential to address those issues that reflect the practical concerns of the Customs community.

The creation of the WCO-IPR Task Force is to be welcomed considering the level of representation of the private-sector participants and the different issues addressed (free zones, destruction and storage of goods, improved Customs/private sector exchanges, the problems with the Internet).

Thus, the judicious balance that needs to be struck between trade facilitation, improved access to the legislation for right holders and the relevance of Customs controls must be capable of generating genuine co-operation based on trust and respect.

In any event, this co-operation between legislator and private sector must be such as to ensure that the legislation responds to the ever-changing pattern of fraud

	Initiatives	Responsible Parties	Date
1	Regular review of the WCO's model national legislation by the expert group	Secretariat, WCO IPR experts Group	December 2006
2	Publication of a technical guideline dedicated to the Risk analysis in the fight against Counterfeiting and Piracy	Secretariat, WCO IPR operational experts group Interested Members	First quarter 2007

3	<p>Reorientation of the topics for discussion at the meetings of the WCO IPR Group to ensure an approach more closely aligned on Customs concerns:</p> <ul style="list-style-type: none"> - The notion of confidentiality in the context of the detention or suspended release of suspect goods - Conditions of transfer of goods to charities - Study and impact of the Universal Postal Convention (UPC) in the context of Internet traffic - Consequences and scope of Article 60 “De Minimis imports” of the TRIPS Agreement - Scope and consequences of Article 58 “Ex Officio action” - Lack of private sector co-operation or misuse of procedures for purposes other than those provided for in the regulations. 	Secretariat, WCO IPR experts Group	December 2006
4	<p>Legal feasibility study of the possibility of bringing infringements relating to technical standards within the scope of the WCO model national legislation in order to provide better protection for consumers <i><u>(if “technical standards” is intended to cover patents, we may be constrained by the TRIPS agreement from expanding the model legislation to cover such items)</u></i></p>	Secretariat, WCO IPR experts Group, Interested members	March 2007
5	<p>Project to design a model international harmonized intervention request form</p>	Secretariat, WCO IPR experts Group, Interested members	March 2007
6	<p>Forthcoming study on requests for action lodged by sector with Customs Administrations</p>	Secretariat, Interested Members	After adoption
7	<p>Collaboration with WIPO to propose to right holders that they should lodge an application for action at the same time as their IPRs are registered</p>	Working Group	After adoption
8	<p>Ensuring that the fight against Counterfeiting and Piracy remains a priority on the agenda of the Anti-Fraud Committee</p>	President of the Committee of fight against fraud	Permanent

9	To study whether the applicable sanctions (<i>Synonymous with “Penalties” ?</i>) as laid down by the national law are sufficient and appropriate	All the Members	Permanent
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(Investigation and comparison of the effectiveness of the sanctions in national law would be a useful activity)

(How to modify International conventions, TRIPS Agreement, Universal Postal Convention?)

(An harmonized format for the Application Form is difficult to draft)

Activity 2. Training, seminars and management of WCO IPR Group Meetings

(A) Training/Seminars

(I) For Customs administrations

Current situation

The training to be delivered should not be aimed solely at Customs administrations but should also enable both the private sector and the police services and political decision-makers to gain a better understanding of the Customs approach to combating counterfeiting and piracy.

In this particular field, in view of the large number of seminars being held around the world, if the WCO wants to be recognized as the world reference organization, from now on it will have to adopt an approach based on technical expertise and experience.

For this purpose, it could envisage establishing a thematic framework or indeed a WCO concept which, of course, would be adaptable in terms of the Member countries requesting the training but would incorporate more or less systematically the same structure.

In addition, at the end of these training seminars, Members would be asked to submit a report that would make it possible to measure their impact in terms of results.

This training structure could be as follows:

	Initiatives	Responsible Parties	Date
10	Presentation of the WCO model national legislation, legal scope and operational consequences	Secretariat, Experts designated by Members	Permanent
11	Request for intervention: optimum protection for the right holder (<u>Request for Enforcement or Application Form ?</u>)	Secretariat, Experts	Permanent

12	Presentation and promotion of the CEN (practical exercises on composing messages and the operational importance of this tool)	Secretariat, Experts designated	Permanent
13	Presentation of risk analysis techniques for combating counterfeiting and piracy: Initial and further training in targeting methods (exercises on the analysis of the information in transport and selection documents - analysis of the outward appearance of packages and containers).	Secretariat, Experts designated by Members	Permanent
14	Presentation of "fake detection workshops". Discussion of specific products led by right holders or: "how to distinguish the genuine article from the fake".	Secretariat, Experts designated by Members	Permanent
15	Exercises on risk analysis in real situations (port or airport) involving the application of the various theoretical notions introduced in the earlier phases	Secretariat, Experts designated by Members	Permanent
16	Workshops to evaluate real operations: Explanation for successes and failures (detailed review of the various targeting criteria to be applied with reference to the transport documents available).	Secretariat, Experts designated by Members	Permanent
17	In all cases, Members that have requested the organization of a seminar or a training course will be systematically asked to follow up the impact of the training	Secretariat, Experts designated by Members	Permanent

(The enhanced use of CEN is a pragmatic approach)

(Try to avoid the duplication of the seminars through a better co operation between all the International institutions)

(It could be good to do trainings for responsible members of the companies , not for the lawyers of the companies)

NB : For the period 2006-2007, there are already plans for four major training/awareness-raising seminars to be organized by the Secretariat and presided over by the Secretary General of the WCO: **Senegal** (Sub-regional Themed Seminar on combating the counterfeiting of pharmaceutical products, planned for November 2006), **Azerbaijan** (sub-regional seminar, same topic February 2007), **Mexico** (seminar on legislation and risk analysis, April 2007), **Japan** (seminar on legislation and risk analysis, October 2007)

(II) A new approach to training: Training of right holders by WCO experts

Current situation

The performance and results achieved in combating counterfeiting and piracy depend on the quality of the co-operation between Customs and right holders.

The most tangible evidence of genuine co-operation is undoubtedly the filing with Customs administrations of requests for Enforcement. Globally, however, in this specific area commitment on the part of the right holders is cruelly lacking.

Out of fear or deliberately but mostly through ignorance, the right holders are not making sufficient use of this tool placed at their disposal, although it has proved the most effective means of protecting their rights on the border. They must therefore be persuaded to make better use of it by explaining to them the importance and benefits of the procedure.

In addition, at a more operational level, within the context of the legal proceedings they institute or the private inquiries they make, the right holders sometimes obtain transport documents containing very important information which they themselves are not always able to exploit, but which, if passed on to Customs administrations, would enable them to develop or improve their risk analyses by constructing or refining targeting criteria.

Awareness-raising training for right holders in the reading of these documents, delivered by risk analysis experts, would thus make it possible to optimize the collating and the quality of the information.

These training sessions which would extend over 3 days (20 to 30 participants per session), could be held either for right holders from the same sector of industry (automotive, food, pharmaceuticals, sports, watch-making, luxury goods, etc.) or for the eligible staff of a single company. There would be a special session for SMI/SMEs.

Finally, at the end of these training sessions, by way of support, the private-sector participants could be offered the E-learning IPR programs developed by the WCO.

A study is being conducted by the WCO with a view to confirming the request previously expressed by the private sector. This program would be implemented in collaboration with the Training Service of the Capacity-Building Directorate.

This training structure could be as follows:

	Initiatives	Responsible Parties	Date
18	Presentation and analysis of the various legislative instruments (TRIPS Agreement, WCO model national legislation, main bodies of national legislation applied throughout the world).	Secretariat, Experts designated by Members	Permanent
19	The need for Customs protection: Why and how should a request for intervention be submitted, the essential information, where to lodge it, etc	Secretariat, Experts designated by Members	Permanent
20	Development of the main trends in smuggling: countries of origin, export, destination, the principal routes, etc	Secretariat, Experts designated by Members	Permanent

21	Raising awareness of risk analysis: how to read, understand and exploit the information in a transport document	Secretariat, Experts designated by Members	Permanent
22	Half-day of practical exercises in real situations. Visit to and exercises in a port or airport	Secretariat, Experts designated by Members	Permanent
23	Evaluation of the training by the group	Secretariat, Experts designated by Members	Permanent

(B) Management of the meetings of the WCO IPR Group

	Initiatives	Responsible Parties	Date
24	Reduction of the number of meetings of this working group from 4 to 3 even 2.	Secretariat, WCO IPR Group	After adoption
25	Reorientation of the topics to be addressed at these meetings. Once a year, a meeting would be devoted to the latest operational trends observed in connection with the development of targeting criteria, changes in smuggling routes, etc	Secretariat, WCO IPR Group	After adoption
26	The WCO IPR GROUP will pass on the results of its work to the IPR TASK FORCE contact point which will present them at the annual plenary session. The WCO Secretariat will be responsible for coordination between the two groups	Secretariat, WCO IPR Group	After adoption
27	Increase in the number of right holders participating in the meetings. A special effort will be made on behalf of SMI/SMEs who could be asked to pay a significantly reduced contribution	Secretariat, WCO IPR Group	After adoption
28	Ensure that the various industrial sectors are properly represented		
29	Extend the group to the holders of such IPR as geographical indications, new plant varieties and appellations of origin		
30	Entrust the WCO, in co-operation with the working group, with the task of preparing the agenda for these meetings		
31	Improve the management of the numerous foreign missions by establishing the concept of quality training		
32	Review the management of the IPR web site by the WCO		
33	Mobilize the WCO's member administrations to give their delegates a mandate to participate in the activities of the WCO IPR GROUP and thus enhance its credibility		

(We would very much like to receive comments and elaboration from the Secretariat as to these concerns as well as their comments on the relationship between the activities of the WCO IPR Group and the WCO IPR Task Force.)

(Initiative n°33 could be taken immediately)

(We need real IPR Customs Experts during those meetings)

Activity 3. Perfecting the WCO tools for promoting a more effective policy on the improvement of Risk analysis techniques for use in combating Counterfeiting and Piracy

(1) The CEN (Customs Enforcement Network)

CEN became operational in July 2000 to Customs administrations of the WCO. Today, more than 1,600 Customs officers in over 150 countries have access to global seizure information in CEN. The number of IPR seizures reported is increasing immensely.

CEN is a global enforcement system to support and enhance Customs' fight against transnational organized crime.

CEN has a number of applications, which can be divided into four main categories

- Database of non nominal Customs seizures and offences
- CEN Web Site (CWS) containing alerts as well as intelligence needed by Customs services
- Concealment Picture Database (CPdb) illustrating exceptional concealment methods and X-ray pictures
- Secured communication applications to facilitate co-operation and communication between Customs services and CEN users at international level.

CEN COMM 2 is another application of CEN and its aim is to provide a secured communication system for operational purposes. This application is only accessible to closed user groups (CUG) of officers for the duration of an operation.

The quality and quantity of data entered into the system varies by region, thus making the value of some reports rather uncertain. Therefore it is of crucial importance at policy-makers level, to stress the vital importance of timely data input of Members seizure data into the CEN database.

The WCO Secretariat believes that the ability to exchange and disseminate information relating to IPR in a timely and accurate fashion through the CEN is highly beneficial to Customs administration in the daily fight to disrupt illicit traffic.

	Initiatives	Responsible Parties	Date
34	Continue promoting CEN as the only worldwide Customs communication and intelligence tool.	Secretariat, RILO, Members	Permanent

	<p>It is imperative to emphasize the importance of timely data input by the Members. This will enable analysts to identify new trends and alerts.</p> <p>Promote the possibility of Electronic Data Interchange (EDI) between the CEN database and national databases. This would considerably reduce work efforts and save time.</p> <p>The usage of CEN COMM 2 should continuously be promoted. Operations could be initiated in connection with e.g. significant sport events, and concerts etc.</p> <p>Encourage Business to use the CEN as a platform for providing information to Customs.</p> <p>Members should provide the RILOs with photos of interesting IPR seizures in order to upload them in the Concealment Picture Database.</p> <p>Encourage Members to make national intelligence reports available to CEN users on the CEN Web Site.</p>		
35	Stress the effectiveness of CEN tools at policy makers level	Secretariat, RILO	Permanent
36	Stress the importance of disseminating alerts and trend analysis	Members, RILO	Permanent
37	Deliver and promote training tools and technical guidelines on CEN, such as the Audio Visual Training Support	Working group	After adoption
38	WCO Secretariat will prepare an annual report for the attention of Customs administrations that identifies the latest trends in the traffic of counterfeit products and record significant seizures	Secretariat, RILO	At the end of each year

(CEN is a very efficient tool without nominative data)

(2) E-learning

Current situation

The WCO Secretariat has recently developed an E-learning module on combating counterfeiting and piracy.

This particularly well-designed new program, which is intended for both Customs administrations and right holders, introduces a rarely equaled technical dimension into risk analysis.

The extension of this program to road transport and postal traffic risk analysis techniques would have the advantage of providing a comprehensive teaching aid that could be adapted to suit the circumstances.

There are two other possible developments. The first concerns the incorporation of a module on so-called "Selection" techniques (visual inspection of the packaging, adhesive tape, container, etc.). The second would help officers to recognize products by sight. This aspect is particularly important and should receive special attention.

The student could make an initiatory guided tour of a "virtual museum" consisting of several rooms each with its own theme (automobiles, pharmaceuticals, food products, etc.).

After absorbing the information he would find there, the student would easily be able to distinguish between the genuine article and the fake.

	Initiatives	Responsible Parties	Date
39	Design a chapter on risk analysis techniques specifically for road traffic	Secretariat	January 2007
40	Design a chapter on risk analysis techniques specifically for postal traffic (Internet).	Secretariat	January 2007
41	Design a module on so-called "Selection" techniques (visual inspection of packaging and containers).	Secretariat	First semester 2007
42	Develop the concept of a "Fake Spotting Museum" on a themed-room basis.	Secretariat	Second semester 2007

(Given the large and growing numbers of shipments in many ports on which risk analysis must be performed, information on development and use of computer-based risk analysis tools should be included here. Such tools contribute to a comprehensive approach by adding another layer to risk analysis that can leverage the knowledge and experience of customs officers.)

(The use of E learning and the virtual museum are practical opportunities)

Activity 4. Improved visibility for the work of the WCO

Current situation

If this type of fraud keeps on spreading, the role of the WCO will have to expand to meet the threat, both in the international fora and in the field.

Many governments are now giving this issue increasing priority and this could provide the WCO with an opportunity, through concrete initiatives, to improve its visibility and its influence on the international stage.

Whether in the G8, Interpol, the WTO, WIPO, the OECD, the IMF or the World Economic Forum, or at meetings with the private sector (Global Congress, Task Force), the WCO should strengthen its position of leadership in this field by proposing both policy and technical initiatives designed to bring these fraudulent activities under tighter control.

Within this context, there are three important and innovative initiatives that could be taken:

- With regard to consumer health and safety, a high-level annual meeting could be organized in partnership with such sectors as the pharmaceuticals industry, the automotive industry and the food industry in order to make a frank assessment of the situation on a worldwide scale and try to draw up a specific action plan.
- Although the fight against counterfeiting is now a subject for discussion at meetings of the G8, poverty provides one of the best breeding grounds for the counterfeit industry. The least developed countries are always a preferred target of the international crime organizations. Lacking resources and unable to respond to the influx of fakes, they are often the sacrificial victims. The WCO and its main partners could organize, at the highest political level, a summit of the LDCs to raise their awareness of the seriousness of the situation. During this world summit, the WCO could propose for their consideration a specific plan for a counterattack based on concrete and realistic initiatives.
- The priority for the WCO remains the elaboration for 2007 of a framework of standards concerning Customs action to provide improved protection for intellectual property rights. Whether a framework of standards or a "kit of measures for enabling Members to fight counterfeiting more effectively", this new instrument could take the form of an "ISO 9002"-type quality charter awarded by the WCO to Members willing to sign up to it.

This IPR quality charter, guaranteed and recognized by other global institutions such as WIPO and the World Bank, could, once introduced and applied, permit the release of budgetary assistance in support of the efforts undertaken in this field by the Members signing up to it.

On a voluntary basis, Members could request the WCO Secretariat to carry out an audit and a technical diagnostic of the national situation which would mainly address the following 5 areas of concern:

- Analysis of the legislation in force and, where necessary, proposals for amending it, with account for specific national circumstances.
- Diagnostic of the risk analysis system in place and, where necessary, proposals for improving it.
- Study and analysis of the results achieved in the fight against counterfeiting and piracy. Publication of an annual report.
- Exchange of information at national and international level.
- Co-operation with right holders.

At the end of this audit, the WCO Secretariat would send the Member a confidential report on the situation, including, where appropriate, proposals for introducing various measures designed to make Customs controls more relevant. This kit of proposed technical measures would encourage the world's Customs administrations to harmonize, as far as possible, their approach.

Aimed at reducing the existing legislative and operational disparities, this new anti-counterfeiting concept would make it possible, on the one hand, to shut down or, failing that, more tightly control the main international routes used to transport these illicit products and, on the other, to provide improved health protection and safety for the global consumer.

	Initiatives	Responsible Parties	Date
43	Hold a high-level annual meeting on the threat of counterfeiting to consumer health and safety. On this occasion, a balance sheet will be drawn up and a specific action plan proposed	Secretariat, Members	Second semester 2007
44	Organize, along the lines of the G8, a summit at the highest political level, attended by representatives of the least developed countries, on the damage caused by counterfeiting and piracy. WCO to propose a specific action plan	Secretariat, Members	Second semester 2007
45	Creation of an ISO 9002-type anti-counterfeiting quality charter, based on an audit and expert analysis, with various proposals by the WCO, via the preparation of a framework of standards	Secretariat, Members	After adoption
46	Co-operation with WIPO, Interpol, WTO, WHO, OECD, G8 Group ...	Secretariat	Permanent

(We have concerns about whether the forming of even more such groups would be of real benefit in combating the IPR problem. Given the great number of high level groups already combating this issue, we would seek clarification from the Secretariat as to what goals and outcomes could be realized by the formation of such an additional group).

(It seems sensible for the WCO to focus effort and support on the LDC's and those where the framework for enforcement is weaker)

Activity 5. International Relations

Current situation

Article 69 of the TRIPS Agreement requires Members of the WTO to “*promote the exchange of information and co-operation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods*”.

Through this article, the legislator sought to stress the importance of international Customs co-operation. Within this context, the WCO could propose for consideration by its Members a draft model co-operation agreement tailored to current needs. This could be appended to the “ISO 9002”-type quality charter.

Similarly, the WCO could approach some of its partners with a view to developing joint programs. Thus, closer collaboration with the European Commission and the Member States, the United States, China and, more generally, all the countries playing an active part in combating counterfeiting should enable the WCO to develop the best practices.

	Initiatives	Responsible Parties	Date
47	Proposal to draw up a model international Customs co-operation agreement on combating counterfeiting and piracy	Working Group	After adoption
48	Improved contacts and greater participation by the WCO in co-operation programs being carried out by the countries most active in combating counterfeiting and piracy	Secretariat, Members	After adoption

(Clearly maximum co operation between countries will be beneficial and desirable)

(We will prefer that the model agreement be incorporated into existing model WCO memorandum of Understanding (legally non-binding) to avoid duplication)
