

# Combatting counterfeiting and piracy

## The EU approach

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# Counterfeiting and piracy

- A serious problem for everyone (1):

What is at stake ?

A worrying evolving problem:

- All types of goods, and even services,
- 650 billion USD per year (ICC), i.e +/- 8% of the global trade

# Counterfeiting and piracy

- A serious problem for everyone (2):

Which impact/consequences ?

- Health and safety, innovation, jobs, development, competitiveness, corruption and organised crime, loss of revenue, security...
- All countries are affected,
- A potential obstacle to international trade (governments, companies, consumers) if not properly addressed, including through international cooperation.

# Counterfeiting and piracy

A serious problem for everyone (3) :

What are the parameters (1) ?

- Globalisation (the market for counterfeited products is also global),
- Huge development of international container shipping, ports handling capacities,...
- Indirect transportation and continuously changing routes ( « breaking bulk » tactique, free zones, transit, transhipments,..),
- Internet,

# Counterfeiting and piracy

- A serious problem for everyone (4) :  
What are the parameters (2)?
  - Obvious links with other highly sensitive challenges and illicit trafficking (supply chain security, organised crime, drugs, funding terrorism,...). Same modus operandi.
  - High profits, low risks, weak deterrence for infringers (cf. thresholds for criminal actions, sanctions,...)
  - Absolute need for cooperation with private sector and partner countries, Asia being a key area.

# Customs: key player in the fight against counterfeiting and piracy

- Customs administrations are the primary public service to control goods crossing borders (import, export, transit),
- In Europe, more than 70% of counterfeit products are intercepted by Customs,
- TRIPS Agreement confers on customs an essential role, in particular in an international context.

# Customs actions under the EC legislation

- Objective: give the possibility to rightholders to protect their legitimate interests on a wide and increasing range of IPR in international trade,
- Action based on a close partnership with the trade community,
- A highly technical matter where public and private sector learn a lot from each other,
- ex-officio interventions,
- International co-operation.

# Our basic objectives

- To better guarantee citizens safety and protection, including in non-EU countries,
- To protect holders' intellectual property rights and support a fair trade environment worldwide (including at export and in transit),
- To promote business innovation and competitiveness and therefore safeguarding jobs while protecting economies,
- To safeguard the financial interests of the EC and of its Member States.

# EU Customs actions: current results

Statistics on customs seizures in 2006 provides very encouraging but also worrying figures on :

- The number of cases (on request and ex-officio)
- The number of articles seized
- The types of goods
- The origin/provenance

# The 1383/2003 EC Regulation :

3 basic improvements:

- Extends the scope of the Intellectual Property Rights subject to actions by the customs authorities,
- Extends the scope of possible actions by the customs authorities,
- Aims at reducing the red tape and the costs for right holders while developing cooperation with customs.

# “Goods infringing an Intellectual Property Right” under Reg.1383

- Counterfeit goods (trademarks, trademark symbols, packaging materials),
- Pirated goods (copyrights or related rights or design rights),
- Other goods infringing a patent, a supplementary protection certificate (plant protection and medicinal products), a national or Community variety plant right, designations of origin or GI, or geographical indications,
- Moulds and matrix.

# Extended scope of actions by Customs

- Customs actions possible when goods are entered for free circulation, export or re-export,
- Possible also when goods are found suspected of infringing IPR during checks on goods entering or leaving the EC customs territory (including transshipments), placed under a suspensive procedure, or placed in a free zone or free warehouse.

## Possible actions by the customs authorities; ex officio procedure.

- when they have sufficient grounds for suspecting infringement to IPR, before an application is lodged, customs may suspend the release of goods or detain them for 3 working days,
- Before informing him of a possible infringement, they may ask the right holder to provide information.

# Cutting red tape for right holders.1

- Quality of information to be provided to customs in the right holder application for customs action has been standardized and improved,
- Form and period of validity for customs action have been harmonized throughout the EU,
- Lodging of applications by computer is encouraged,
- Where EU IPR is concerned, the application may cover customs action in several Member States

# Cutting red tape for right holders.2

- Fees and security have been abolished to allow SMEs cost-free access to the regulation,
- Security has been replaced by an undertaking from the right holder to accept possible liability,
- Right holders receive more detailed and frequent information from customs,
- Right holders may be provided with samples for analysis to enable the procedures to better continue.

## Cutting red tape for right holders.3

- Goods can be destroyed without awaiting the outcome of substantive legal proceedings, with the agreement of the holder of the goods or of the declarant.

# Provisions applicable to goods found to infringe an IPR

- To take the goods off the market,
- To deprive of the economic benefits of the transaction,
- To constitute an effective deterrent to further transaction of the same kind,
- To penalise the fraudsters.



# **The EU ACTION PLAN**

**(October 2005)**

# Assessment of the situation

- Customs seizures suggest an increasing and diversified problem,
- Reasons for the large increase in trade in fakes are linked to the parameters previously described: transport developments, internet, high profits/low risks, growing interest by organized crime, increasingly sophisticated industrial production capacity in certain countries,...
- New threats and consequences are very serious and must be vigorously addressed (cf. health and safety, international trade, supply chain security, tax losses, organised crime,..)

# 2005 Recommendations

- Increasing EU level protection through up-to-date legislation and an improved operational performance (in particular on risk analysis and risk management),
- Improving the Customs-business partnership,
- Reinforcing international co-operation and partnership.

# **1. LEGISLATIVE ASPECTS**

- To establish a Business/Customs Working Group to carry out an initial post implementation review of Council Regulation 1383/2003 (on-going process)
- To prepare proposals for any necessary legislative amendments and progress these through the relevant Regulatory procedure

## **2. IMPROVING CUSTOMS OPERATIONAL PERFORMANCE: RISK MANAGEMENT**

- Produce EU Risk Management Guide
- Create closed user groups of counterfeit experts from MS to exchange real time risk information using the new EU Risk Management system
- Task Force of Customs experts from MS to improve anti-counterfeiting controls
- EU Risk analysis profiles (being now expanded to all imports and exports under the new EU legislation on security)

## **2. IMPROVING CUSTOMS OPERATIONAL PERFORMANCE: RISK MANAGEMENT (next)**

- Establishing joint operational controls (Operation FAKE,.....)
- Ensure particular emphasis is given to those products that present significant health and safety risks
- Training material (e.g. business to provide MS with access to training material on latest risk trends for their products)

### **3. IMPROVING THE CUSTOMS / BUSINESS PARTNERSHIP**

- **Member States to encourage business in lodging IPR Application for Customs.**
- **Member States Customs will encourage the development of quick reference guides etc.**
- **Rapid distribution of alerts**
- **Use of seminars (cf upcoming seminar on medicines in Austria) in order to mutually deepen expertise.**

## **4. SPECIFIC ACTIONS WITH SENSITIVE BUSINESS SECTORS**

- Specific actions will be taken in respect of high risk sectors for public health (pharmaceutical, toys etc.)
- Raising awareness

## 5. INTERNATIONAL ACTION

- Utilising to maximum effect Customs co-operation Agreements (USA, China,.....),
- EU-US Joint Strategy on IPR,.....
- Promoting Customs Cooperation with major international partners, namely in Asia (agreements with the ASEAN member countries, technical assistance, seminars)
- Co-operation with WCO, Europol, Interpol,...
- Customs action being of course part of a wider strategy on IP (WTO, FTAs, ECAP,..)

# Thank you for your attention

For more information, please consult our website:

[http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/index_en.htm)

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