



React



Meeting report and next steps

CBEC – React – ICC BASCAP IPR Workshop: Role of Customs in Protecting India's Consumers and Economy from Counterfeits

15 January 2018

Overview

In association with the Central Board of Excise and Customs (CBEC), ICC BASCAP and React organised a one-day workshop for Customs officers and industry partners on the important role of Customs in mitigating the trade in counterfeits and further building cooperation with rights holders and other enforcement agencies. The Workshop brought together key Customs officers, brand owners, industry associations and law firms in India and featured more than 18 national, regional and global experts, who provided a broad range of perspectives on the role of Customs and related challenges.

Summary of discussions

The CBEC welcomed closer cooperation with BASCAP and React in deterring the trade in counterfeits and had requested to prepare follow-up actions based on the outcome of the Workshop to engage more closely.

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Challenges for Customs:

- Advancement of technology is a new challenge in fighting counterfeits as criminals are using highly sophisticated networks; as a result, the criminals are always ahead, permitting Customs only to be reactive and one pace behind. Customs and industry must scale efforts to meet this challenge.
- Volume of imports is staggering and examining all containers is neither feasible nor justifiable economically. Identifying and reaching culprits without rights holders' support is challenging for Customs. India's risk based assessment is advanced when compared to other countries, rights holders and Customs must make the most of this. A new Directorate for Risk Management and Analysis has been set up. Consignment scanners have been installed in Mumbai port as a pilot project – although difficult to detect IPR infringements, misdeclarations can be detected.
- Lack of training of ground officers and staff to handle consignments – specially to identify mixed goods containers. This is challenge for all ports, not just the large ones that make news headlines.
- Postal and couriers are the preferred mode of transport for goods ordered online. The volumes of small packages are extremely high and along with it come a variety of challenges. The lack of intelligence from stakeholders and the lack of manpower for Customs are key impediments to detecting counterfeits in small consignments. Rights holders have been called upon several times to inspect intercepted couriers – however there is little cooperation from their end due to the small quantities.

Recommendations from industry:

- Conduct 100% scanning of containers for a specific period e.g. 1 week before the holiday season. Use intel and leads obtained from this exercise to feed into risk management systems. Rights holders are willing to support such initiatives.
- Review and revise submission of bank guarantee from rights holders. This represents a significant open-ended financial term risk to trademark owners as cases can be unresolved for years. Bank guarantees also have an impact on overdraft and other limits that are common procedures imposed by bankers. Moreover, due to the large quantities of counterfeit goods being imported, the financial value of the bank guarantee is burdensome and presents practical operating difficulties for the parties involved.
- Request for sustained dialogue on storage and destruction costs and to define liability of the culprits. Currently rights holders bear costs for storage and destruction – this causes undue burden on rights holders while the culprits do not face repercussions for their actions.

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- Provide timeline for adjudication after seizure of consignments and for storage and destruction of goods. The delay in prosecution causes inordinate delays in the destruction of goods thereby increasing storage costs tremendously.
 - Better KYC and KYS norms are required to identify criminals and source of counterfeits.
 - Publish bi-annual or annual statistics on IPR infringing goods seizures.
 - Customs are encouraged to undertake more *suo-moto* actions especially when importer information looks dubious.
 - Cooperation with other agencies and government departments including police is encouraged for enhanced information sharing and identifying gaps in enforcement.

Recommendations from Customs

- Require intelligence from rights holders for better risk management systems and targeting consignments.
- In the case of small consignments for online orders: Customs encourages rights holders to come forward and assist them regardless of the quantities to enable Customs to gather valuable intelligence to introduce into risk management. Customs invites rights holders to engage in active dialogue including on sector/ product specific information.
- E-commerce platforms should mandate proper KYC information from their importers including complete product details.
- AEO Programmes: Logistic companies part of the online supply chain are encouraged to join.
- Given that the Customs Facilitation Committee has periodical consultations, Customs suggests to include monthly meetings with rights holders to discuss exchange of information.
- Role of IP Cells in each Customs House needs to be expanded to make better use of the resources. Rights holders are invited to provide suggestions.
- Customs agrees that the law should be reviewed on costs related to storage and destruction of counterfeit goods. Customs welcomes proposals from industry.

Next steps

- Provide Mr Rohit Anand, Under Secretary, CBEC with a list of immediate, short and long term recommendations. Arrange a meeting to discuss the above recommendations and next steps.

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- Prepare a report on impediments caused due to central and consignment bond submission by rights holders. Discuss next steps with Mr Pranay Wahane, Joint Director, Risk Management Division, Mumbai Customs.
 - Explore opportunities to enhance capacity building efforts.
 - Follow-up with Mr Pranay Wahane, Joint Director, Risk Management Division, Mumbai Customs on contributing to new IPR portal.
 - Follow-up with Dr. Shaifali G Singh, Joint Commissioner, CGST Noida Principal Commissionerate, Noida/ Mr Subodh Singh, Joint Commissioner, GST Audit Commissionerate, Gurugram on BASCAP and React attending the Customs Facilitation Committee's consultations.
 - Explore with industry how the role of IP Cells can be enhanced for effective enforcement.
 - Initiate dialogue with industry on liability for costs for storage and destruction of counterfeit goods.
