

Customs seizure procedures of IPR infringing goods at UK and European Union borders

1. Summary

EU legislation (Council Regulation (EC) No 1383/2003) provides for Customs to temporarily detain any goods if they suspect that these goods infringe any intellectual property right, including patents. Under the customs legislation, Customs authorities do not decide whether goods are infringing IPR. The general procedure is to detain goods and subsequently inform the right holder of the detention. It is then up to the right holder to pursue the matter through a court, where appropriate, under national provisions. Only a national court has the power to establish if the goods infringe any Intellectual Property Right and, therefore, if they should be seized and possibly destroyed. However, under certain circumstances and with the agreement of both parties, the goods may be expeditiously destroyed, without recourse to a court. If the right-holder does not initiate court procedures within the deadline determined by the customs legislation, the goods are released by customs.

2. How the UK implements the EU legislation

2.1 The situation prior to 3 July 2009

2.1.1 Prior to July 2009, UK Revenue and Customs provided that allegedly counterfeit and pirate goods could be seized on the basis of a witness statement alone from the trade mark rights holder. The matter was only brought to the attention of a Court if the importer or other interested party appealed against the seizure. Moreover, goods suspected of infringing a patent or design right were dealt with differently, requiring a rights holder to commence proceedings prior to any seizure taking effect.

2.2 The situation after 3 July 2009

2.2.1 The UK has been advised to align its seizure process more closely to the Council Regulation (EC) No 1383/2003 and so adopt an approach employed by the majority of other EU member states. It is now hoped

that the approach to customs seizure procedures is harmonized across the 27 EU member states. Under the new procedure, a rights holder should submit an IP application and notify Her Majesty's Revenue and Customs' Customs & International Supply Chain Integrity and Facilitation unit of the alleged infringing product. The IPR allegedly infringed can be trade marks, patents or design rights.

2.2.2 When goods suspected of infringing IPR are identified by the UK customs team, the rights holder is notified as set out in the IP application and the goods are detained automatically for ten working days.

In order to maintain the detention beyond ten working days the right holder must initiate proceedings to determine whether an IPR has been infringed or reach agreement with the declarant, holder or owner of the goods to abandon the goods.

2.2.3 The rights holder may apply to extend the detention period by a further ten days although the detention period cannot exceed twenty days in the absence of court action. In the case of perishable goods, the detention period within which court proceedings must be initiated is three working days and may not be extended.

2.3 The situation across the EU member states in 2008

2.3.1 Statistics just published by the European Commission relating to goods infringing intellectual property rights (IPR), show for the sixth consecutive year a significant increase in customs activity. In 2008, customs registered over 49,000 cases of goods detained at the EU's external border, suspected of IPR infringements, compared with 43,000 cases in 2007. The 2008 statistics show that:

- Cooperation with industry has continued to develop, with nearly 13,000 applications (10,000 in 2007) filled in by the industry to request customs actions in cases where there is a suspicion that products are infringing an IPR. This represents 80% of the customs interventions in 2008

- There was a sharp increase in 2008 in the actual number of IPR infringing goods detained by customs – 178 million compared to 79 million in 2007
- In terms of cases, the most significant increases can be seen in the following product categories:
 - toys: +136%
 - electrical equipment: +58%
 - medicines: +57 %
 - personal care products: +42%;
- The number of articles detained increased even more significantly, in particular in the following categories:
 - DVDs: +2600%
 - Medicines: +118%
 - Cigarettes: +54%
- China was the main source country for IPR infringing articles with 54% of the total amount. However, in certain product categories, other countries were the main source, notably Indonesia for foodstuff and beverages, the United Arab Emirates for cigarettes and India for medicines
- CD/DVD was the top category of articles detained with a total amount of 79 million, which accounted for 44% of the entire amount, followed by cigarettes (23%) and clothing and accessories (10%)

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