

RECOMMENDATION
OF THE CUSTOMS CO-OPERATION COUNCIL
ON THE NEED TO DEVELOP MORE EFFECTIVE CUSTOMS CONTROLS
AIMED AT THE PREVENTION OF INTERNATIONAL TRADE IN GOODS
WHICH INFRINGE INTELLECTUAL PROPERTY RIGHTS
WITH RESPECT TO COPYRIGHT AND TRADEMARKS

THE CUSTOMS CO-OPERATION COUNCIL,

NOTING that since its foundation, the Council has been fully aware of the need for States to protect themselves against the various forms of Customs fraud and smuggling,

NOTING the Seoul Declaration of June 1984, urges those Members and, where appropriate, those Customs or Economic Unions which are not yet parties to the Nairobi Convention, to intensify their efforts and accede to that Convention and to implement its provisions as soon as possible,

NOTING the Brussels Declaration of June 1986 to strengthen the role of the Council in the field of enforcement by actively seeking the support and co-operation of organizations involved in international commerce, transport and travel to assist Customs, *inter alia*, in eradicating commercial fraud in all its forms and in particular "the trade in infringing copyright and industrial property",

NOTING that the Agreement on trade-related aspects of intellectual property rights (TRIPs) of the General Agreement on Tariffs and Trade desires to reduce distortions and impediments to international trade,

NOTING that the TRIPs Agreement takes into account the need for each Member to provide for effective and adequate protection of intellectual property rights (IPR),

NOTING that the TRIPs Agreement recognizes that intellectual property rights are private rights,

NOTING that the TRIPs Agreement provides for ex-officio action, so that the competent authorities can act on their own initiative,

HAVING REGARD to the Paris Convention (1883) for the Protection of Industrial Property and the Berne Convention (1886) for the Protection of Literary and Artistic Works administered by the World Intellectual Property Organization (WIPO), whose primary objective is to promote the protection of intellectual property on a world-wide basis,

HAVING REGARD also to Article XIX of the aforesaid Paris Convention which states that Parties may make, separately, between themselves, special arrangements for the protection of industrial property,

HAVING REGARD to Council enforcement recommendations concerning mutual administrative assistance (5 December 1953) and pooling of information concerning Customs fraud (8 June 1967, 22 May 1975, 15 June 1983),

RECOGNIZING the ever increasing threat that counterfeit goods smuggling presents to the economic health and welfare of society,

RECOGNIZING the need to improve the capacity of law enforcement agencies to target and intercept movements of counterfeit trademark and pirated copyright goods without unduly hindering the movement of innocent persons and legitimate international trade,

RECOGNIZING also the benefits of Memoranda of Understanding, such as that concluded between the Council and the International Federation of the Phonographic Industry (IFPI), on improving co-operation to combat infringing IPR trade in this respect,

RECOGNIZING that responsibility for initiating action and dealing with IPR infringing goods may rest jointly with competent authorities, including Customs,

RECOGNIZING that not all countries' Customs authorities have the identical competence or resources with respect to IPR matters,

BELIEVING that it is at the national level where the joint development and implementation of international co-operative agreements is most appropriate,

BELIEVING that it is at the national level where the implementation of the agreed measures will be most effective,

BELIEVING that Customs authorities should be active in the development of international co-operative agreements,

BELIEVING that the co-operation of traders and other parties involved in international trade can significantly assist Customs authorities in the gathering of information for risk assessment and targeting purposes, and can lead to the improvement of detection capabilities and specialized training of Customs and trade personnel,

SUPPORTS the principle of achieving increased co-operation between Customs authorities and traders and other parties involved in international trade through joint enforcement efforts,

SUPPORTS the principle of achieving increased co-operation between Customs authorities and traders and other parties involved in international trade through the establishment of points of contact, lines of communication, and by pursuing an aggressive awareness programme,

UNDERLINES the importance of increasing co-operation and effective exchange of information on a reciprocal and equitable basis between the Customs Co-operation Council and other international organizations involved in action to combat the illegitimate trade in infringing goods, such as the General Agreement on Tariffs and Trade (GATT) and the World Intellectual Property Organization (WIPO),

CONSIDERS the Council should take initiatives designed to provide co-ordination, liaison, and support for multilateral control programmes to develop practical measures against all forms of commercial fraud,

RECOMMENDS that Members of the Council and members of the United Nations Organization or its specialized agencies, and Customs or Economic Unions should :

1. establish that dealing with trade in infringing goods and combating IPR violations be an important role of Customs administrations,
2. recognize the need for the prevention, detection and repression of illegitimate trade in IPR infringing goods,
3. increase their efforts to co-operate on bilateral, regional and multilateral bases in the fight against Customs offences, including commercial fraud with respect to the trade in counterfeit trademark and pirated copyright goods,
4. where the greater involvement of Customs is desired, give urgent consideration to concluding Memoranda of Understanding (MOUs) on a national level with companies and trade associations involved in international commerce, where they have not done so, or to introducing other voluntary co-operative programmes, to further support the joint efforts of Customs and the trade in the fight against trade in infringing goods,
5. where the greater involvement of Customs is desired, work closely with the trading community to promote the adoption of MOUs in many regions, securing their effective local application by regular monitoring and updating, and extending their scope from industry associations into broader agreements with other appropriate national agencies,
6. ensure that the necessary structures and procedures are in place to allow Customs authorities to assist IPR holders through administrative, judicial, or ex-officio means to protect their interests,
7. establish procedures whereby Customs administrations can communicate intellectual property rights violations to the CCC,
8. afford the necessary attention to formulation of appropriate Customs legislation, regulations and administrative guidelines based, as appropriate, on a CCC IPR - Customs Procedures Manual, to deal with all aspects of trade in infringing goods,
9. participate in the sharing of information on intellectual property rights violations at both international and national levels and thus enhance administrative and operational co-operation,
10. in collaboration with the Council Secretariat, incorporate specialized training methods for combating IPR fraud into training provided to staff assigned to Customs inspectional functions and as far as possible, maintain a degree of continuity with the staff employed,
11. seek, to the greatest extent possible and by whatever means appear most appropriate, to secure the fullest co-operation of commercial, fiscal or banking authorities and others involved in international commerce and trade to assist the international Customs community in combating IPR fraud,
12. establish some form of border measures that reflect the enforcement options available in the TRIPs Agreement, or in other applicable international agreements on intellectual property rights,

13. ensure that border measures dealing with intellectual property rights afford non-discriminatory national treatment to imported goods,
14. ensure that Customs administrative procedures in dealing with IPR's are equivalent in substance to the judicial standards as provided for in international agreements on intellectual property rights, including TRIPs and the Paris and Berne Conventions,

REQUESTS Members of the Council and members of the United Nations Organization or its specialized agencies, and Customs or Economic Unions which accept this Recommendation to notify the Secretary General of their acceptance, and of the date from which they will apply the Recommendation and the conditions of its application. The Secretary General will transmit this information to the Customs administrations of all Members. He will also transmit it to any Customs administrations of non-Members and any Customs or Economic Unions which have accepted this Recommendation.
