



WORLD CUSTOMS ORGANIZATION

# **SECURE**

## **Provisional Standards Employed by Customs for Uniform Rights Enforcement (SECURE)**

**[Provisional Global Customs Standards to Counter  
Intellectual Property Rights Infringements]**

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**June 2007**

## INTRODUCTION

1. Violations of intellectual property rights (IPR) are a serious and growing threat to the health, safety and economic interests of the entire world. Counterfeit and pirated goods that infringe legitimate intellectual property rights are produced, transported, distributed or sold in every country throughout the world. The globalization of counterfeiting and piracy poses a very real and growing threat to both developed and developing countries. Counterfeiting and piracy are serious threats to consumer health and safety, tax revenue, and innovation that is essential to economic development. In terms of products which expose the public to serious health and safety risks, there have been cases of pharmaceutical products and prescription medicines manufactured from inferior, inactive or dangerous ingredients or auto and aircraft parts which do not meet safety standards. These examples serve as worrying reminders of how dangerous counterfeiting can be. The theft of intellectual property rights deprives governments of tax revenues that could be used for programmes to benefit their citizens, but instead fund the illegal activities of organized criminal groups to the detriment of society. Countering IPR infringements was a priority on the G8 agenda (United Kingdom 2005, Russia 2006, Germany 2007). In addition to health, safety and tax revenue concerns, the G8 has recognized that product innovation and entrepreneurial inventiveness are also casualties of unchecked IPR infringement.
2. With their critical role in controlling and administering the cross-border movement of goods in international trade, Customs administrations are perfectly positioned and have an important role in interdicting and disrupting the illicit trade in goods that infringe intellectual property rights.
3. In order to better co-ordinate Customs worldwide efforts to interdict and disrupt the illicit trade in IPR-infringing goods, the World Customs Organization (WCO) has developed provisional standards to be employed by Customs for uniform rights enforcement (SECURE), to promote improved border enforcement of intellectual property rights. The WCO is offering provisional standards, procedures and best practices that will prove effective in a co-ordinated global effort to suppress the illicit trade in goods that violate intellectual property rights. As counterfeiting and piracy are a growing and ever-evolving problem, SECURE will be a living document that will change and evolve to meet the counterfeiting and piracy challenges of the future. In the fight against counterfeiting and piracy, the WCO and its Member Customs administrations will make use of and improve existing WCO tools that address IPR issues, such as the WCO Model IPR Legislation, WCO Risk Management Guidelines, the IPR Diagnostic Survey and the WCO IPR e-learning module. The border control provisions of the WCO's Revised Kyoto Convention on Customs procedures, the border control standards of the WCO SAFE Framework and the WCO Integrated Border Management Guidelines will be used to strengthen our anti-counterfeiting efforts. The Customs Enforcement Network (CEN) and its communication tools will be used for the timely transmission of information to fight the illicit trade in counterfeit goods.
4. The WCO will co-operate and co-ordinate its IPR enforcement efforts with Interpol, WIPO, OECD, WHO and other regional or international organizations having IPR responsibilities. WCO Member Customs administrations should co-ordinate their IPR enforcement efforts with any national governmental organizations having IPR responsibilities. The WCO and its Member Customs administrations should interface with rights holders and private entities engaged in the fight against counterfeiting.

5. There are three key activities identified in SECURE : (I) IPR Legislative and Enforcement Regime Development; (II) Risk Analysis and Intelligence Sharing; (III) Capacity Building for IPR Enforcement and International Co-operation. There are targets and objectives related to each of the three areas contained in the document. These targets and objectives will be pursued in consultation with WCO Members, intellectual property rights owners, and other public and private sector entities engaged in the fight against counterfeiting and piracy. The three pillars on which these provisional IPR enforcement standards rest are :
  - Customs-to-Customs co-operation.
  - Customs/Rights Holders partnership.
  - Customs interface with other public and private entities engaged in the fight against counterfeiting and piracy.
6. By promoting SECURE, the WCO will be supporting Customs IPR enforcement standards and best practices that have been recognized as effective by WCO Member Customs administrations, rights holders, and anti-counterfeiting entities which are essential to the development of effective worldwide anti-counterfeiting and piracy enforcement programmes. The WCO and its Members recognize that the SECURE document is a living document that will be revised, amended and updated to stay abreast of the ever evolving counterfeiting and piracy problem while, at the same time, providing Customs administrations with new best practices to fight against counterfeiting and piracy.
7. The WCO will promote SECURE to requesting Members by offering capacity building, and by monitoring and quantifying the results associated with implementation of these initiatives.
8. The provisions in the SECURE document are offered as voluntary measures which WCO Members may choose to adopt or adapt, either in whole or in part, and in conformance with their national legislation and policy. The programme is independent of and not linked, financially or otherwise, with other programmes of the World Customs Organization.
9. The Secretary General will establish a SECURE Working Group to supersede all other IPR and related groups at the WCO, and those affiliated with the WCO. The SECURE Working Group will be comprised of all interested WCO Members, members of the trade, trade representative organizations, rights holders and other appropriate observers. It is recognized that Member Customs administrations and the trade participants may need to meet separately, as well as in joint sessions. The SECURE Working Group will work with and through other WCO committees, as appropriate, before presenting its products and recommendations to the Policy Commission.

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## SECTION I. IPR LEGISLATIVE AND ENFORCEMENT REGIME DEVELOPMENT

10. Given the increase in IPR fraud, Customs authorities should extend their control prerogatives beyond goods entering their countries to include goods leaving or transiting their national territory. It is equally important that Customs authorities be empowered to detain, seize, forfeit and dispose of goods that infringe intellectual property rights. These Customs prerogatives should be exercised at exportation, at importation, in transit (when health, safety or other risks are concerned), in free zones, and more generally whenever goods are under Customs supervision.
11. Effective and efficient Customs IPR enforcement action necessarily depends upon a strong foundation of national laws and regulations. The WCO will assist Members seeking to implement and/or improve legal provisions supporting their IPR enforcement efforts.
12. In order to meet these objectives the WCO Secretariat will :
  - Maintain and update the WCO's Model IPR Legislation.
  - Develop new legislative models that address the evolving IPR problem and give Customs the legal authority to act against IPR violations whenever infringing goods are under Customs supervision.

### **Standard 1**

Customs administrations should have the legal authority to enforce IPR laws whenever goods are under Customs supervision, including for example :

- Import;
- Export;
- Transit;
- Warehouses;
- Transshipment;
- Free zones;
- Free ports;
- Postal shipments;
- Goods ordered via the Internet.

### **Standard 2**

Customs administrations should have a clear legal mandate to control goods that could infringe intellectual property rights in accordance with relevant international agreements (such as matters relating to de minimis amounts and ex officio intervention authority).

### **Standard 3**

National authorities may consider extending the scope of Customs IPR legislation from trademark and copyright to other intellectual property rights areas.

### **Standard 4**

With respect to requests from rights holders for Customs intervention, there should be an attempt to harmonize the format and reduce the cost of such requests.

### **Standard 5**

Customs should have the authority to conduct post-clearance audits of imports that target intellectual property rights infringements.

### **Standard 6**

Customs administrations should have clear and simple procedures for all aspects of intellectual property rights enforcement.

### **Standard 7**

Customs administrations should have the legal authority :

- To transmit to the rights holder, as appropriate, information regarding the detention of infringing goods;
- Where appropriate, to permit rights holders to transfer detained goods to alternative places of storage under Customs supervision, at the expense of the rights holders.

### **Standard 8**

Customs administrations should designate a central office or contact point to facilitate the lodgement and handling of the requests for intervention and any other matter related to IPR enforcement.

### **Standard 9**

Rights holders should be expected to :

- Maintain strict compliance with Customs procedures;
- Transmit timely and accurate information to Customs relating to the intellectual property rights for which they are seeking protection;
- Relieve Customs of storage charges incurred under control procedures.

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## SECTION II. RISK ANALYSIS AND INTELLIGENCE SHARING

13. As WCO Member Customs administrations face increasing resource constraints on the one hand and expanding trade and security responsibilities on the other, the development of effective procedures and strategies to combat IPR violations is crucial. Customs administrations should apply enforcement systems based on international best practices that use risk analysis and risk management to identify goods which pose potential risks.
14. The WCO will encourage Member administrations to establish risk-based targeting measures and to promote intelligence-sharing programmes among WCO Members using the Customs Enforcement Network (CEN).
15. In order to meet these objectives the WCO will seek to :
  - Develop guidelines and standards regarding IPR targeting criteria for all modes of transport;
  - Develop guidelines and risk analysis techniques for Internet traffic;
  - Review and revise the WCO Risk Indicators Handbook on a regular basis to maintain its effectiveness;
  - Develop procedures for computer-based IPR risk assessment;
  - Develop procedures for post-entry audits for IPR violations;
  - Compile and share analytical and statistical data on IPR violations. The WCO considers it vital to rely on the CEN system for data collection and information transmission in pursuing its efforts to fight counterfeiting and piracy.

**Standard 1**

Customs administrations should utilize computer-based risk assessment and targeting tools to more effectively detect and control shipments posing a risk, thus facilitating Customs clearance of low-risk shipments.

**Standard 2**

Customs administrations should create and implement targeting criteria that specifically combat counterfeiting and piracy in response to :

- National illicit trafficking patterns;
- Regional illicit trafficking patterns;
- International illicit trafficking patterns.

**Standard 3**

Customs administrations should implement techniques for the selection and control of goods moving by air, sea or land.

**Standard 4**

Customs administrations should target summary declarations and transport documents prior to Customs clearance.

**Standard 5**

Customs administrations should consider setting up specialized teams for combating counterfeiting and piracy.

**Standard 6**

The WCO will encourage increased co-operation among WCO Members and the Regional Intelligence Liaison Offices (RILOs) covering the six WCO Regions.

**Standard 7**

Subject to any limitations imposed by national legislation or policy, WCO Members should :

- Share IPR data, pictures and alerts of significance;
- Promote the CEN and its applications as the premier worldwide communication tool for Customs administrations in the submission, collection and exchange of information;
- Share seizure data with the CEN via the RILOs on a timely basis, and in accordance with national legislation;
- Set up information exchange networks among IPR experts from the various units and with national governments via the CEN;
- Utilize appropriate national contact points responsible for collating IPR information and directing controls at national level.

**Standard 8**

Customs administrations should use the WCO IPR e-learning programme and WCO anti-counterfeiting and piracy risk indicator handbooks to focus on risk analysis aimed at combating counterfeiting and piracy.

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### SECTION III. CAPACITY BUILDING FOR IPR ENFORCEMENT AND INTERNATIONAL CO-OPERATION

16. Within the framework of an IPR Capacity Building Programme with dedicated and independent funding, the WCO will draw up a comprehensive training plan which involves three stages :
- (i) An in-country assessment to lay the groundwork for further necessary steps;
  - (ii) A technical seminar, conducted with private sector collaboration, to promote legislative and operational best practices which take into account the socio-economic realities of the Member;
  - (iii) A reasonable follow-up period in which to provide support for any legislative and operational changes which the Member country may wish to introduce.
17. In the area of IPR enforcement tools, the WCO is seeking to improve and streamline WCO IPR training, improve risk analysis methods and procedures for promoting communication between rights holders and Member Customs administrations, and foster partnerships with other IPR enforcement organizations. In order to meet these objectives, the WCO will work to :
- Develop WCO IPR “Train the Customs IPR Specialist” and “Train-the-Trainer” programmes;
  - Develop joint business and Customs training curricula;
  - Promote new WCO IPR risk analysis guidelines;
  - Develop and promote WCO IPR e-learning resources;
  - Organize and staff specific IPR training missions;
  - Develop counterfeiting and piracy detection workshops;
  - Develop joint conferences with other relevant regional or international organizations regarding IPR enforcement issues.

**Standard 1**

The WCO and Customs administrations should co-operate with rights holders to achieve better IPR enforcement.

**Standard 2**

The WCO will co-ordinate with WIPO, Interpol, OECD, WHO and other appropriate international, regional and national groups to increase visibility of IPR enforcement and to devise the most effective anti-counterfeiting and piracy solutions.

**Standard 3**

The WCO Secretariat will, after taking data security concerns into account, propose a CEN-based information system that receives information from the private sector for Customs use in order to permit transmission of specific information on suspect consignments or the technical characteristics of products.

**Standard 4**

The WCO Secretariat will maintain a requisite level of IPR expertise to assist in implementing IPR enforcement tools and training efforts.

**Standard 5**

The WCO will develop training programmes that address the needs of both rights holders and Members.

**Standard 6**

The WCO will promote the use of the WCO e-learning module as an educational tool in IPR enforcement.

18. Other elements necessary to an effective programme, but which do not have the status of Standards, also play an important role. There should be a campaign established to promote best legislative practices, taking account of national socio-economic realities. There could be a joint public and private monitoring centre established, as appropriate, to analyse the latest trends in trafficking of counterfeit and pirated goods. Regular meetings between the Customs authorities, national consumer organizations, and the rights holders' associations should be organized. These gatherings would provide opportunities to take stock of possible difficulties encountered by the parties involved in combating counterfeiting and piracy.

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## CONCLUSIONS

19. In order to be fully effective SECURE, which could be applied in modular form over time to take account of each Member's legal and economic circumstances, must be part of a broader Action Plan (reflected in the WCO Strategic Plan for 2007/2008 to 2009/2010 (Doc. SP0248) and the Annex hereto) which could include provisions addressing :
- Implementation of new technical measures and promotion of existing WCO Model Legislation via diagnostic and monitoring missions within the context of a capacity building programme.
  - Organization of targeted technical seminars on medicaments, consumer goods, spare parts, etc., as requested by Members.
  - Organization of awareness-raising meetings on IPR fraud for decision-makers in co-operation with other inter-governmental organizations (Interpol, WIPO, WHO).
  - Fostering closer co-operation with the OECD to improve statistical data in order to better quantify/qualify the scope of the IPR problem.
  - Production of Customs statistical reports containing technical analyses of contemporary trends.
  - Organization of future Global Congress sessions on the combating of counterfeiting and piracy.
  - WCO Secretariat rationalization and management of the various working groups addressing IPR issues.
  - Organization of co-ordinated control operations at regional and international levels.
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