COUNTERFEITING AND PIRACY
Crime of the 21st century?

COUNCIL SESSIONS
Newcomers and future directions

INTERVIEW
SAFE, BASC and SMEs

POINT OF VIEW
Unfair competition
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D/2007/0448/34

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Design: www.inextremis.be
CALENDAR

Calendar of Events

Please note that the meetings mentioned for information purposes are not all open to the public. Unless otherwise indicated, all meetings are held in Brussels. Please note that these dates are indicative only and may be subject to change. This document is regularly updated on the WCO Members’ Web site, under the “Meetings” section, and on the WCO Events Web site: http://events.wcoomd.org

OCTOBER

9 – 10  CS Advanced Forum on Global Customs Compliance, Brussels (Belgium)
15 – 16  Private Sector Consultative Group (PSCG)
17  SAFE Working Group (1st Meeting)
18 – 19  SECURE Working Group (1st Meeting)
22 – 26  Technical Committee on Customs Valuation (25th Session)
23 – 24  Harmonized System 2007 Workshop for High-Tech Products

NOVEMBER

5 – 6  Revised Kyoto Convention Management Committee (3rd Meeting)
5 – 7  Regional Operational Seminar on Combating Counterfeiting and Piracy, Buenos Aires (Argentina)
8 – 9  Regional Forum on Combating Counterfeiting and Piracy, Buenos Aires (Argentina)
7 – 8  Administrative Committee for the Customs Convention on Containers, 1972 (10th Session)
8 – 9  Permanent Technical Committee (179th/180th Sessions)
13 – 14  Customs Valuation and Transfer Pricing Workshop
15 – 16  Special Drug Enforcement Meeting
19 – 30  Harmonized System Review Sub-Committee (36th Session)
27 – 28  Rules of Origin Workshop

DECEMBER

4 – 6  Intellectual Property Rights Workshop
6 – 8  Policy Commission (58th Session), Almaty (Kazakhstan)
10 – 12  Working Group on Commercial Fraud (3rd Meeting)
10 – 12  Regional Operational Seminar on Combating Counterfeiting and Piracy, Douala (Cameroon)
11 – 12  World Customs Forum 2007: WCO SAFE Framework of Standards
13 – 14  CEN Management Team – CENMat – (7th Meeting)

JANUARY 2008

14 – 18  Scientific Sub-Committee (23rd Session)
21 – 25  Information Management Sub-Committee (54th Session)
26  International Customs Day
28 – 1/02  Technical Committee on Rules of Origin (26th Session)

Date to be confirmed
Meeting of Members of the North of Africa, Near and Middle East

FEBRUARY 2008

3 – 5  4th Global Congress on Combating Counterfeiting and Piracy, Dubai (United Arab Emirates)
12 – 13  4th annual European Cargo and Border Security Summit, Prague (Czech Republic)
12 – 13  Harmonized System General Interpretative rules Workshop
19 – 21  EastWest Institute Worldwide Security Conference (5th Meeting)
25 – 29  Enforcement Committee (27th Session)

Upcoming events


Date to be confirmed: Seminar on Combating Counterfeiting and Piracy in preparation for the Beijing Olympic Games 2008, China

23-25 April:  2008 WCO IT Conference & Exhibition, Seoul (Republic of Korea)

1 July:  40th Anniversary of The European Customs Union
Dear reader,

The 2007 Council sessions have come and gone, with Directors General of Customs having charted the path that the Organization will follow for the next 12 months. These sessions always prove to be an enriching experience, especially for the Secretariat, as we have the opportunity to report on the successes of the previous financial year, on those issues requiring further support and resources, and on general progress with respect to the implementation of the programmes outlined in the Strategic Plan.

Customs in the 21st century was the theme of this year’s Council sessions. It is an important focus topic as Customs Chiefs across the globe grapple with how best to position their administrations to cope with the challenges, meet the threats and take advantage of the opportunities presented in the future global trade environment. The discussion generated many ideas and is clearly a subject close to the heart of the Customs community. Indeed, I look forward to the final outcome of our study, which will paint a credible scenario of our future environment and indicate the road ahead for our administrations.

The Council agenda also included counterfeiting and piracy and being of increasing concern to the international community, led to it being chosen as the subject to grace this issue’s Special Report. This illegal trade knows no boundaries, has no scruples, and continues to flourish and grow at an alarming rate. An uncomfortable and even terrifying fact, given the health and safety consequences. It is not just about sunglasses, training shoes or handbags; it is also about baby food with no nutritional value, drips filled with tap water destined for cancer patients, and car brake-pads that simply fail to stop a moving vehicle. The WCO has developed a programme - *Standards Employed by Customs for Uniform Rights Enforcement* - designed to provide Customs administrations and its international stakeholders with a structured instrument to combat this illegal trade. While the Council has broadly accepted the key procedures, it will be further fine-tuned to make it even more effective. Our vital anti-counterfeiting and piracy initiatives are set to gather pace as the protection of intellectual property rights continues to be strengthened.

Finally, Mr. Antoine Manga Massina, Director General of Cameroon Customs, was elected as the next Director of Tariff and Trade Affairs with effect from 1 January 2008. Equally, these Council sessions saw the Council welcome the European Community into its midst, an historic occasion that met with resounding applause given the global position occupied by the European Community.

This edition of WCO News concentrates on all the above.

I hope all our readers in the Northern hemisphere have had a good summer, despite the weather. For those of you in the Southern hemisphere yours is just about to begin, enjoy!

Warmest wishes,

Michel Danet
Secretary General
Accord between the WCO and the World BASC Organization

At the June 2007 Council sessions, the Executive President of the World BASC Organization (Business Alliance for Secure Commerce), Mayra Hernandez de Cavelier, and the Secretary General of the WCO, Michel Danet, signed a Memorandum of Understanding (MOU) to promote the implementation of the SAFE Framework of Standards. This MOU officialises the close links that have existed between the WCO and the WBO for many years.

Emphasis has been placed on co-ordinating regional and national training activities aimed at promoting the implementation of the Framework of Standards within trade circles as well as other WCO instruments in this domain, including cooperation between the private sector and Customs administrations with regard to supply chain security, and Customs-Business capacity building projects and partnerships.

This co-operation will facilitate the sharing of information, experiences and “know-how” between WCO and WBO Members, and will enable the possibility of developing a pilot project to enable SMEs to implement supply chain security measures to be explored.

Mrs. Hernandez de Cavelier revisits this subject in an interview with WCO News (see page 33).

More information
www.wbasco.org

Doing Business Anywhere: The Essential Guide to Going Global
...A book by Tom Travis

As the author of this book, Tom Travis, so rightly says, we are all actively involved in global trade as we go about our daily lives whether we consciously know this or not. Challenges and opportunities are an integral part of the 21st century international trade environment as is globalisation. If one wants to succeed, it is imperative that one learns to navigate this terrain.

This is exactly what this book sets out to do. It provides the reader with six tenets of global trade backed by clear explanations as to how they should be applied in real-world situations involving a wide range of role-players. The book is an indispensable guide to trans-national economic operators, global business leaders, Customs executives and trade managers as it provides an arsenal of useful tools for doing business globally.

From taking advantage of trade agreements, to protecting your brand at all costs, to maintaining high ethical standards, Tom Travis’ incredible understanding of the business world and the issues that impact on the trade environment make him a leading business coach. This essential guide is a global winner both for its insight and its value-added leadership.

More information
cs-books@wiley.co.uk
www.wiley.co.uk
Windfall!
The WCO has been included in a list of international organisations that will benefit from the generosity of the Irish Government’s “Aid for Trade” programme. This additional funding will be used to enhance the Customs IT capacity of developing countries.

www.dfa.ie

Appointments
Recently appointed Directors General of Customs include Mr. Gilles Hounkpatin (Benin), Mr. Ousmane Guiro (Burkina Faso), Mr. Ezéchiel Niyibigira (Burundi), Mr. Mindia Gadaevi (Georgia), Mr. Nikolaos Vernadakis (Greece), Mr. Oscar Humberto Funes Alvarado (Guatemala), Mr. Richard Yuen Ming-fai (Hong Kong, China), Mr. S.K. Shingal (India), Mr. Metib Wesewes Al-Zaben (Jordan), Mr. Kozy-Korpesh Karbuzov (Kazakhstan), Mr. Nurlan Akmatov (Kyrgyzstan), Mr. Lakshman Kumar Pokhrel (Nepal), Mr. Bjørn Røse (Norway), Mr. Predag Petronijevic (Serbia), Mr. Nabeel Ali Al Syouri (Syria) and Mr. M. Muyangwa (Zambia).

www.wcoomd.org

Scam
The New Zealand Customs Service is warning people who have purchased goods over the internet not to react to scam emails asking them to pay “Customs” fees or duties before their goods will be released! Buyers should be extra vigilant when purchasing goods over the internet as fraudsters continue to target this communication platform 24/7.

www.customs.govt.nz

Post-it
From 29 June 2007, Ghana became the 131st Contracting Party to the Harmonized System (HS) Convention. The Convention will enter into force on 1 January 2009 unless Ghana decides to specify an earlier date. Madagascar became the 53rd Contracting Party to the revised Kyoto Convention on the same day.

www.wcoomd.org

Info
The WTO jointly published “World Tariff Profiles” with UNCTAD and the ITC (the International Trade Centre). This new reference source provides detailed data on bound and applied tariff rates on all WTO members and will certainly be handy for all those involved in multilateral trade negotiations.

www.wto.org

News
The Montreal Protocol on Substances that Deplete the Ozone Layer has celebrated its 20th anniversary this year. At this occasion, the “Green Customs Initiative” and the WCO were awarded the 20th Anniversary Ozone Protection Awards, in the category “Partners Awards”, for their critical role in the development or implementation of the Montreal Protocol. China Customs administration received an award in the category “Implementers Awards” recognising extraordinary contributions of those whose hard work at the country level has helped to make the Protocol’s phase-out goals a reality.

http://ozone.unep.org/20th_Anniversary/awardees_and_winners.shtml

Must see
The Counterfeiting Museum of France’s Union of Manufacturers (UNIFAB) has opened a new temporary exhibition “Counterfeiting and the Internet: Just a click can lead you up the garden path”. As its main objective, the exhibition hopes to make consumers who purchase goods on the Web more vigilant to unscrupulous sellers who may be out to trick and even steal from them.

www.unifab.com

Growing
The WTO has grown to 151 members as of 27 July 2007, the date the Kingdom of Tonga ratified its accession package to become the latest WTO Member 30 days after national ratification.

www.wto.org

Announcement
Two new WCO Regional Offices for Capacity Building (ROCB) will be inaugurated by the end of 2007: one in Buenos Aires (Argentina) for the Americas region; and a second in Abidjan (Côte d’Ivoire) for the West and Central Africa region.

www.wcoomd.org

Novelty
Ozzy and Zoe Ozone, molecular cartoon characters from the UN Environment Programme’s (UNEP) illustrated booklet series about ozone depletion and inter-related global environmental threats, were designed to deliver important messages to children and adults about how they can protect the environment. The animated cartoon booklet “Ozzy goes polar” was launched on 5 June, celebrated annually as World Environment Day.

www.ozzyozone.org
Finland hosts the annual meeting of the Western Europe RILO

The National Contact Points for the Western Europe Regional Intelligence Liaison Office (RILO) met from 19-20 June 2007 in Tampere (Finland) for their annual meeting.

Some 50 delegates from 21 countries in the Western Europe region, together with the heads of the RILOs for Eastern and Central Europe, the Commonwealth of Independent States (CIS) and Asia/Pacific, plus representatives from Europol, the European Anti-Fraud Office (OLAF), the SECI Center and UNEP (UN Environment Programme) took part in this two-day meeting.

The Agenda addressed, in particular, Member countries’ Customs enforcement results. In this connection, the heads of the four RILOs presented a progress report on the fight against the illicit traffic in narcotics, contraband cigarettes and counterfeit or pirated goods in their respective regions.

The other highlight of the meeting was the commencement of an enforcement project and an operation for which the WCO’s communication tool, the CEN-COMM, will be used:

• “Projet Fair Play” on the traffic in counterfeit and pirated goods in relation to the Beijing 2008 Olympic Games. The 11 RILOs, plus the United States and Canada, will take part in this project which was validated by the Enforcement Committee in February 2007 and by the Council in June 2007. The Western Europe RILO is in charge of organising and co-ordinating the project in close consultation with the Secretariat’s CEN and IPR teams.

• “Operation Ataman” on the traffic in narcotic drugs and psychotropic substances in the postal and express courier sector. This operation will run over a six-week period during the second half of 2007. The CIS RILO will serve as the operational co-ordination unit for this operation in which all RILOs are welcome to participate.

These initiatives are fully in line with the conclusions which emerged from the thematic group discussions held during the Enforcement Committee’s 26th Session in February 2007. The effectiveness of such projects and operations, as revealed by previous pilot projects, and the reliability and user-friendliness of CEN-COMM, are arousing increasing interest among Members. Consequently, the use of this innovative and effective tool for operational activities is to be broadened to include other enforcement sectors.

More information
pierre.bertrand@wcoomd.org

WCO Trends and Patterns Report

The Secretariat has just released Issue One (June 2007) of the WCO Trends and Patterns Report which provides a capacity building estimate of the current status of Customs administrations and what needs to be achieved for further modernisation. Using diagnostic findings and recommendations emanating from missions conducted under the guise of the WCO Columbus Programme as a basis, this comprehensive Report will supplement existing research material, directly or indirectly, that focuses on Customs operations. Not only do the findings in the Report identify where we are and how we should be moving forward, they also provide a vehicle for the WCO, in partnership with the global Customs community, to continue expanding existing capacity building initiatives and enhancing modernisation support programmes.

More information
robert.ireland@wcoomd.org
Regionalisation: a reality in the Caribbean!

Regional Training Centres (RTCs) offer a means to optimise available regional resources, to respond more rapidly to training requests from Member Customs administrations and to achieve greater awareness of regional needs thanks to a solid grasp of the specific requirements of its Members.

These RTCs facilitate the sharing of experience and know-how among the region’s Customs services, and ensure tailored and effective monitoring of the WCO’s programmes from a regional perspective.

During the 2007 Council Sessions, the Customs administration of the Dominican Republic and the WCO Secretariat signed a Memorandum of Understanding on the establishment of a RTC in Santo Domingo Este. This RTC is the first of its kind for the Americas Region.

To date, the WCO has opened 14 RTCs: five in the Asia/Pacific Region (China, Hong Kong, China, India, Japan and Malaysia); three in East and Southern Africa (Kenya, South Africa and Zimbabwe); one in West and Central Africa (Burkina Faso); three in Europe (Azerbaijan, Hungary and the Russian Federation); one in the North of Africa, Near and Middle East Region (Lebanon); and the latest one in the Caribbean (Dominican Republic).

More information
http://learning.wcoomd.org

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Drugs, tobacco, and counterfeits

DRUGS ...The international trafficking of drugs is an extremely damaging international phenomenon, adversely affecting all nations, but particularly impacting on those societies and people who are most vulnerable to exploitation by organised criminal groups. Fighting this scourge will contribute directly towards international enforcement efforts, the security of the international trade supply chain, and strategies to stem the harmful narcotics trade.

The latest WCO Customs and Drugs Report 2006 considers the analysis of seizures on a regional basis and includes a brief global overview on each of the main drug categories in order to provide information on the current production and trafficking trends not identified in the analysis. Particular emphasis has been placed on the illegal trade in opiates, opium, cocaine, cannabis, psychotropic substances which constitute the main drug types. During 2006 significant seizures included: 6.3 tonnes of heroin; 46.8 tonnes of plain cocaine; 234 tonnes of cannabis resin; 13 tonnes of amphetamines; 5 tonnes of valium; and 1.8 tonnes of Ecstasy!

TOBACCO ...The illegal traffic in cigarettes continues to abrade government revenues and harm society. Overall analysis demonstrates that tobacco and cigarette smuggling, including counterfeit cigarette seizures, remains a growing global problem. Concerns have also been raised that trans-national criminal organisations may be using this form of smuggling to fund their operations.

The third WCO Customs and Tobacco Report 2006 presents an analysis of all reported seizures and aims to provide a global overview of the tobacco smuggling phenomenon and the initiatives undertaken to counteract this lucrative illegal trade. It also includes many facts and figures, statistical analysis and the modi operandi prevalent among smugglers specialising in this specific activity. During 2006 seizures of illicit consignments of cigarettes exceeding 100,000 numbered 1,361 which translate into 2.8 billion pieces!

FAKES ...The production of counterfeit and pirated products continues to grow at an alarming rate and has reached intolerable proportions. In fact the array of fake goods is staggering. This scourge which has visible negative consequences for international trade, economic development, business confidence, and the health and safety of citizens around the world has to be stopped as a matter of priority.

The new WCO Review of the Fight against Counterfeiting in 2006 was produced with the main objective of informing the consumer about the real dangers of these products and to raise their awareness about the criminal industry that is so heavily involved in this illegal trade. These efforts will, it is firmly believed, engender a sense of responsibility and mobilise support to combat this empire of fraud, illusion, and deceit which places human lives at risk and wrecks initiatives designed to promote economic and social prosperity. During 2006 there were more than 7,300 reported cases involving the seizure of more than 322 million counterfeit or pirated articles: the top 5 articles being CDs and DVDs; cigarettes; toys and games; footwear; and cosmetics and perfumes!

More information
communication@wcoomd.org
On 1 June 2007, WTO Director-General Pascal Lamy came to Brussels to meet with WCO Secretary General, Michel Danet. The following topics were at the core of the discussions:

- Calendar for the Doha Development Agenda: prospects for progress with the negotiations in light of efforts by Member countries’ political and economic leaders to break the deadlock, and implementation by the WCO of a capacity building programme aimed at assisting WCO Members to implement the Doha Agreement, if the negotiations result in a political agreement.

- Status of the Origin dossier: continuation of the WTO Committee on Rules of Origin’s work to complete the negotiations on core policy issues by July 2007 and the overall architecture, the technical aspects, the overall coherence exercise and the rectification of the Harmonized Rules of Origin on the basis of HS 2007 by December 2007. Issues relating to the many bilateral trade agreements which had been concluded would be examined later.

- Counterfeiting and piracy: the WCO activities relating to the prevention, enforcement and repression of this trade as well as its technical assistance and training to WCO Members, all of which contributed to the harmonised and focused implementation of the WTO TRIPS Agreement.

- Harmonized Commodity Description and Coding System (HS): in the framework of the Doha negotiations, attention was drawn to certain difficulties that had arisen as a result of the use of an old version of the HS but as the 2007 version had entered into force on 1 January 2007, this version and this version only, should be used as the reference point for all Doha development agenda discussions.

Mr. Danet said that the WCO Secretariat would continue to contribute to the WTO process while securing the implementation of its instruments and the promotion of Customs reform as an element of capacity building in the trade sector. By the same token it would continue to participate actively, with the WTO Secretariat, in the national needs assessment project. Finally, the WCO will play an active role in the identification of services which could be impacted by any agreement reached, and will identify areas of convergence and shared competences with other authorities at borders with a view to working in synergy, sharing experiences and expertise, and avoiding duplication and any overlap. Lengthy discussions enabled the heads of the WTO and WCO to give constructive thought to cooperation between the two institutions.

More information
www.wcoomd.org
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**A new portal for the WCO!**

As from 24 September 2007, the WCO now has a central portal accessible at http://www.wcoomd.org that combines its former five separate web sites into one.

On the home page, after choosing your language of choice, you will be able to access either the

- Public,
- Members,
- Learning,
- Events or
- CEN

section of the website.

You are invited to visit our new website for the latest news on international Customs issues.

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By selecting the fight against counterfeiting and piracy as its theme for 2007, the international Customs community has set the tone by demonstrating its firm commitment to the task of combating this phenomenon.

At the recent Council sessions, Customs Directors General decided to set their sights on making change happen, and reversing the upward trend of this form of “economic terrorism”.

This special report on counterfeiting opens with a description of the WCO Secretariat’s approach to this issue, and then moves on to a forum in which private sector representatives and legal experts analyse the existing situation and the problems encountered, providing a few suggestions along the way about how to step up anti-counterfeiting and piracy efforts at the global level.

Two first-hand accounts by Customs administrations - German Customs (which was awarded the WCO Trophy for 2007) and New Zealand Customs - add substance to the report which then goes on to look at the issue of “the internet and postal traffic”.

The special report then concludes with an original touch in the form of an artist’s take on the topic, transforming words and actions into a work of art designed to deliver an uncompromising and uncomfortable message to counterfeaters.

In the “Point of View” column, an intellectual property lawyer sheds some light on the concept of look-alikes, and on the legal grounds for objecting to any deliberate violation of intellectual property rights.

We hope that this issue’s special report will provide some insight into the shadowy world of counterfeiting and piracy, and provide the right impetus for you to join us in our efforts to actively combat this illegal trade across the globe.
Symbols of globalisation
It’s 12.54, a 40 foot container full of cosmetics swings overhead, borne by one of the hundreds of cranes in the port of Shanghai. Two seconds later another 40-footer with more than 8 million cigarettes hidden inside is loaded onto a ship bound for West Africa. Only 2 further seconds tick by before a crane swings into action to load a container full of tea en route to Dubai. Every 2 seconds a container leaves the port of Shanghai. Who could fail to be impressed by the never-ending dance of these huge metal boxes, symbols of the globalisation of trade!

The one million Customs officers around the world who make up the combined force of all the WCO’s Member administrations have to deal with an annual flow of 400 million containers, and the number is increasing by 10% each year.

It’s 02.00 at Zaventem Airport in Brussels, and under the deafening unrelenting roar of airplane engines, the 100 or so employees of an express courier company start their shift. By daybreak they will have handled between 130 and 140 thousand packages. Every night, as many packages pass through this centre as there are Customs officers in the European Union!

Spoilt for choice
Anything that can be bought and sold is now being counterfeited: soup, mineral water, breast implants, contact lenses, toothpaste, sweets, jam, pharmaceutical products for treating life-threatening conditions such as breast cancer and high blood pressure, pacemakers, baby milk, weapons of war, automobile brake disc pads, and even a WCO training course on CD!

The days when 7 out of 10 companies falling victim to counterfeits were in the luxury goods industry are long gone. Everything has changed in the past 20 years. In 2006, luxury goods accounted for only one percent of all the items intercepted by the 27 Customs administrations of the European Union (EU). The number of IPR-infringing products seized at the external borders of the EU rose from 10 million in 1998 to 253 million in 2006. Between 2005 and 2006, the US Customs and Border Protection agency reported an 86% increase in the number of products intercepted. As for the Chinese Customs authorities, they have seen the number of counterfeit products seized double over the same period. These figures boggle the mind.

To gain a better understanding of these fraudulent practices which are now affecting everything and everybody, they need to be viewed as part of a changing scene. There have been big changes in the nature of counterfeit and pirated goods, but the same can be said of the techniques developed by criminal organisations to transport these goods to their ultimate destinations. In fact the modus operandi used to move counterfeit goods is the same as that used to transport drugs. Direct carriage from the country of production to the point of consumption is virtually unheard of these days.
Today, counterfeit goods will cross several borders, or even several continents, passing from port to port and from airport to airport, changing ships or changing planes, using free zones and sometimes even switching transport documents or containers.

All this subterfuge has one main priority: to conceal the true origin of the goods and thereby avoid attracting the attention of Customs and other border control services. This technique, commonly known as transhipment or break-bulk transit, is very widespread nowadays, and Customs services have had to adapt their control methods, shifting their focus away from the origin of the suspect goods to the point of dispatch and, in more general terms, the itinerary followed.

Stemming the tide

While it is a fact that almost 80% of counterfeit or pirated goods originate in China, the ever-increasing volume of commercial traffic, the changing nature of products and the new routes used for fraudulent activities, have forced Customs administrations to adapt their control techniques if they are to successfully mount a challenge to this illegal activity. The approach used now involves studying the transport documents for each consignment in order to quantify the potential risks. This new approach ticks all the boxes for what is in fact the primary mission of a Customs service, namely, to facilitate international trade while conducting controls on the movement of goods.

Risk analysis or targeting enables Customs to conduct fewer, but more effective controls. Proof of this lies in the fact that the proportion of goods subjected to physical inspection at the EU borders stands at 3%, meaning that around 97% of goods are not inspected at all. However, fewer controls do not mean fewer results, as evidenced by the European statistics quoted earlier: Customs seizures of counterfeit products rose from 10 million in 1998 to almost 253 million in 2006, without any increase in the number of controls. This leads us to the question of whether the increase in the number of products intercepted can be put down to the pertinence of the controls or the increased production of counterfeit goods.

For a better understanding of what is taking place, and what impact it is having on consumer health and safety and on the economy, we must try to quantify and qualify this phenomenon.

In 1997 and 1998, the OECD and the International Chamber of Commerce estimated that counterfeiting and piracy accounted for between 5% and 7% of world trade. In 2003, the World Economic Forum in Davos concluded that this traffic was worth about 500 billion US dollars. Some rights holders associations have estimated that counterfeiting and piracy cost the EU alone 200 000 jobs. According to a new OECD study published in 2007, counterfeiting represents more than 2% of global trade, amounting to 200 billion US dollars. While there may be differences in estimates, this underground trade is still worth a lot of money and who knows where this money ends up or what it will be used for - financing a major terrorist attack perhaps, destabilising the economy of a fragile state, fermenting civil war, or even fuelling the degrading drug trade. The horrors of what this “bad” money can do are endless!

Responding to the threat

Combating counterfeiting and piracy is a priority for the WCO and its Members – a fact confirmed at the most recent sessions of the WCO Council which met in June 2007. To assist its 171 Members to combat counterfeiting and piracy more effectively, the Council adopted a number of new initiatives, both legislative and operational, in the shape of two important instruments: the SECURE (Standards Employed by Customs for Uniform Rights Enforcement) Programme and an Action Plan. These two new tools, which are in no way mandatory and will be implemented on a voluntary basis, will lay the foundation for the WCO’s rolling anti-counterfeiting and piracy efforts.

Protecting consumer health and safety is a vital mission for Customs administrations across the globe and it is important that WCO Members equip themselves with new laws and enhanced operational instruments offering practical responses which are commensurate with the risk that counterfeit and pirated products pose.

More information
christophe.zimmermann@wcoomd.org
Let’s rise to the challenges

The Global Congress has become the pre-eminent global forum for shaping practical strategies to meet the shared challenges posed by the worldwide trade in counterfeit and pirated products.

This illegal trade threatens economic development, consumers’ health and safety, and good governance. The Fourth Global Congress will be results-oriented. It will build on the process that began with the First Global Congress in Brussels in 2004, bringing together top government and private sector representatives to pool their experience, enhance international co-ordination and co-operation and seek more effective solutions in pursuit of their common goals of combating counterfeiting and piracy.

This year, the interactive discussions will focus on the technical aspects relating to trafficking via the Internet, transhipment and capacity building in developing countries.

The Fourth Global Congress will be structured to allow for maximum interaction and dialogue among participants.
SECURE

WCO Members have resolved to strengthen the position of Customs with regard to the protection of intellectual property rights by developing a set of IPR Standards known as “SECURE” (Standards Employed by Customs for Uniform Rights Enforcement). The purpose of this consolidated platform is to promote better compliance with intellectual property rights at borders by building Customs capacity and strengthening cooperation with its international partners and rights holders.

SECURE will give WCO Members a set of standards built around 3 key activities: IPR Legislative and Enforcement Regime Development; Risk Analysis and Intelligence Sharing; and Capacity Building for IPR Enforcement and International Cooperation. Targets and objectives have been set for each of these 3 areas.

The standards rest on three pillars:
- Customs-to-Customs cooperation
- Customs - Rights Holders partnership
- Customs interface with other public and private entities engaged in the fight against counterfeiting and piracy.

The WCO’s Action Plan for 2007/2008 divides the actions to be undertaken into four areas of activity:

- Improving the effectiveness of legislative provisions and of the WCO tools for promoting a more effective policy on the improvement of risk analysis techniques for use in combating counterfeiting and piracy.
- Enhanced cooperation with rights holders, aimed in particular at increasing their awareness of the advantages of lodging an application for intervention.
- Greater international co-operation among Customs administrations, and between them and their partner international organisations, in order to focus their collective energies on the sole ambition of combating counterfeiting and piracy.
- Developing an IPR training programme for Customs administrations and the private sector, as well as a joint Customs/business programme.

“SECURE” is a living document which will continue to be enhanced and improved by a dedicated working group that will report to the Policy Commission. The group will be open to all interested Members and to the private sector. It may meet in plenary sessions, which could include Customs and private sector representatives, or in sessions reserved for either Customs or private sector representatives only.

Handy guide to some key international IPR instruments

WTO TRIPS Agreement - Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994
Rome Convention - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26 October 1961
Berne Convention - Convention for the Protection of Literary and Artistic Works of 9 September 1886, as amended
Paris Convention - Convention for the Protection of Industrial Property of 20 March 1883, as amended

More information
www.wto.org
www.wipo.int
Once Customs authorities have suspended the release of goods infringing an intellectual property right, right-holders have to secure border measures by filing proceedings. For this purpose, right-holders have a number of different options. The present article briefly examines the different alternatives available and looks at their advantages and disadvantages. This is very important since the resources and anti-counterfeiting budgets of right-holders are limited and consequently, right-holders should follow up border measures on a case by case basis to ensure that they add strategic value to their efforts.

The general rule is enshrined in Article 55 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) which provides that Customs authorities who have taken border measures must be informed, no later than 10 working days after the right-holder has been served notice of the suspension, that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the border measures, otherwise the goods will have to be released. Article 55 stipulates that this time-limit may, in appropriate cases, be extended by another 10 working days. The TRIPS rule is echoed in national, or regional, provisions on border measures. Under this rule, different options are available to the right-holder or the authorities: conservatory measures, provisional measures, proceedings on the merits (which may consist of civil or criminal proceedings) and, whenever available, a simplified procedure or a Customs offence procedure. These options can be summarised as follows:

**Conservatory measures**, such as seizures of counterfeit goods, will often qualify as proceedings on the merits, as they require the judge to make a prima facie assessment of the infringing nature of the goods. The main advantages of such conservatory measures is that they extend the term of the detention, which will allow time to gather evidence and create facts, and potentially make room for a settlement with the infringer. The disadvantage being that conservatory measures are only provisional measures, meaning that they will have to be followed up by proceedings on the merits.

**Provisional measures**, including inter partes (with a defendant present) and ex parte (without the presence of a defendant) summary proceedings require the judge to make a prima facie assessment of the matter. Their main advantage is that they provide facts and possibly allow a settlement. These measures, as with conservatory measures, must be followed up by proceedings on the merits [cf also Article 50 § 6 and Article 55 of the TRIPS Agreement].

Whenever available, **criminal procedures**, in which the authorities pursue the infringer of an intellectual property right, will be regarded as proceedings on the merits. Amongst the many advantages of criminal relief is that it is cost efficient (since the initiative rests with the authorities) and is dissuasive (as the infringer is punished). Criminal proceedings will also allow the negative impact of counterfeiting on society to be emphasised. In many countries storage and destruction costs will be paid by the authorities. The fact that the action is in the hands of the authorities, which may be an advantage, may also disadvanta-
geous to right holders as they lose control over the case. Other downsides are that civil proceedings must await the outcome of criminal proceedings, that settlements are not always possible, and that the criminal route is time consuming.

**Civil proceedings**, whereby the right holder pursues the infringer in front of the civil courts, are the quintessence of proceedings on the merits. This action is totally in the hands of the right holder, which is mostly seen as an advantage. Other positive features are the fastness and efficiency of the procedure and that a settlement is always possible. The downside is that civil proceedings can be very costly, that the storage and destruction costs have to be advanced by the right holder (who can reclaim them from the defendant) and that the proceedings must await the outcome of criminal proceedings.

In countries that have introduced a simplified procedure (which provides for the surrender of the infringing goods for destruction with the explicit or implied consent of the owner, holder, consignee or consignor of the goods) right holders will often opt for this option. The simplified procedure allows a speedy resolution of the case without the need to start proceedings. It is cost efficient as it leads to a quick resolution thus sparing procedural and storage costs. However, the infringer is not punished apart from losing the goods. Also, the right holder will obtain no information on the distribution network and, except with an agreement to the contrary, the right holder will have to meet the destruction costs.

When available, the Customs offence procedure (whereby the authorities pursue and sanction the infringer for a Customs offence) will be considered a valuable option as the administrative procedure lies in the hands of the authorities. This makes the procedure cost efficient. It will also lead to the infringer being punished. Nevertheless in the event that the authorities conclude a transaction, it is likely that no information on the traffickers will be provided to the right holder.

Several factors will thus determine the course of action the right holder opts for: the nature of the infringement, the personality of the infringer, the remedies sought and the priorities of the right holder, but also the proof required in the action and the type of intellectual property right infringed. Several scenarios may therefore be distinguished:

The **first scenario** involves small quantities of infringing goods and/or an infringer who is a natural person - in such cases there is only little information to be recovered as there will often be neither invoices nor a wider distribution network to be uncovered. There is also no prospect of recovering substantial damages, as natural persons are often insolvent. Depending on its availability, the right holder will often choose the simplified procedure, the Customs offence procedure or the criminal procedure.

The **second scenario** concerns goods in transit - in most cases no one will claim ownership of the goods. Again depending on its availability, it is recommended that the right holder opt for the simplified procedure, the Customs offence procedure or the criminal procedure.

The **third scenario** involves a shipment of large quantities of infringing goods and/or an addressee in the jurisdiction but either unknown, a repeated offender or insolvent - in this case the right holder will often prefer criminal proceedings. The advantage is that the investigations, police enquiries and hearings of witnesses will be carried out by the authorities and that the attorney fees will be limited to filing the complaint, monitoring the case and pleading. However, right holders should bear in mind that they are responsible for filing the criminal proceedings in case the action is dismissed.

The **fourth scenario** concerns large quantities of infringing goods and/or an addressee in the jurisdiction who is known or solvent - in such cases the classic civil proceedings are suggested as there is the prospect of damages that can be recovered. However, the right holder has to gather the necessary evidence of the infringement and this may sometimes be burdensome but if there is not enough evidence, it may also be an option to be a civil party in criminal proceedings.

By way of conclusion, the decision on the follow up of border measures will essentially depend on the facts of every single case. The general considerations listed in this article should be seen as a “check list” not as definitive rules. A good knowledge of the law and practise in the jurisdiction where the infringing goods have been subject to Customs detention is of paramount importance when making this assessment.

More information

www.EemanPartners.com
www.bordermeasures.com
Even the WCO is a victim!

...a pirated Harmonized System CD Rom

If you have difficulty distinguishing between the original CD Rom and its perfectly illegal copy, this is because pirates have mastered the art of counterfeiting perfectly!

The CD Rom on the left is the original whilst that on the right is the copy.
Counterfeiting trends in the pharmaceutical industry

...by Ashley How, European Director, Pharmaceutical Security Institute

The Pharmaceutical Security Institute (PSI) has as its top priority, the protection of the public health through the disruption and dismantling of criminal groups involved in counterfeit pharmaceuticals. To that end the PSI works closely with the WCO, Customs administrations, other law enforcement agencies and drug regulatory authorities. While some sense of the global counterfeiting problem is conveyed by well publicised cases, too often the availability of counterfeiting data is limited even at times dubious, overly optimistic, very pessimistic, or highly questionable estimates are presented as fact.

Since 1992, the PSI has collected data on illicit activities that include counterfeiting, illegal diversion and theft. This data comes from its members, through global research and by liaising with law enforcement agencies. Multi-lingual analysts in coordination with experienced investigators manage this consistent flow of information, as data is collected, analysed and disseminated in support of individual inquiries. Strategic information on trends, essential to gain a full understanding of the nature of the counterfeiting threat posed by international criminal conspiracies, is regularly produced which enables the PSI to understand and represent the true nature of the problem.

In 2006 the PSI recorded 1184 cases of counterfeit medicines in its Counterfeiting Incident System (CIS) compared to 899 in 2005 which represents a 32% increase. In terms of PSI methodology, an incident could be as small as a single person caught with a packet of 10 counterfeit tablets or a seizure involving 10 tons of fake medicine valued at hundreds of US dollars. The CIS database indicates that the number of countries around the world experiencing counterfeiting, theft and illegal diversion in 2006 remained about the same as in 2005, namely, 100 countries of which the top 3 in terms of counterfeiting incidents only were Russia, China, and Uzbekistan with Brazil and India next in line.

Finally, CIS data disclosed that during 2006, reported law enforcement activity, when measured by “number of arrests made” decreased by 10%, when compared to 2005. In total, there were 755 individuals arrested for crimes relating to counterfeiting, illegal diversion, and theft incidents. While the reductions are of concern, there was a noticeable increase in the quality of the arrests - more arrests for manufacturing and transporting counterfeit medicines rather than arrests at point of sale.

In supporting other organisations involved in the fight against counterfeit medicines, the PSI provides: coordination and a point of contact during company and/or law enforcement agency investigations spanning numerous countries; access to a substantial database that serves as a starting point for all enquiries regarding operational or investigative matters including due diligence enquiries; and access to training aimed at combating the production and movement of counterfeit medicines.

The Pharmaceutical Security Institute, Inc. is a non-profit association based in Vienna, Virginia, United States. Its members include 24 research based pharmaceutical manufacturers whose operations span over 160 countries. It is dedicated to protecting the public health, sharing information on the counterfeiting of pharmaceuticals, and initiating enforcement actions through the appropriate authorities.

More information
www.psi-inc.org
Counterfeit medicines, a threat to public health!

...by Chris Merchant, Security Director, Merck MSD

The considerable rise in incidences directly related to the counterfeiting of prescription medicines and the associated threat to public health over the past 3 years has been a major factor in Merck & Co., Inc. (known as Merck MSD in Europe) dedicating increased resources to preventing and detecting counterfeits and counterfeiting operations worldwide. Globalisation and the Internet have led to greatly increased volumes of international trade and, unfortunately, have also presented opportunities for dishonest and unscrupulous criminals and traders to exploit the system.

One of the most effective measures has been increased cooperation with Customs authorities across the globe. As Customs Officers represent the frontline of law enforcement in international trade, it is vital for companies such as Merck to ensure that these officers are aware of our trademarks, patent rights and genuine products in order to enhance their efforts to combat the trade in counterfeit medicines at import, export or when these illegal goods are in transit. Key to this process has been to provide training to Customs administrations on our authorised and genuine trade routes and importers and to educate Customs officers on the main indicators for counterfeit pharmaceuticals.

Exchanging operational level information with Customs authorities where Merck and other pharmaceutical companies including the Pharmaceutical Security Institute are aware of attempts to smuggle counterfeit and illegally diverted or stolen pharmaceuticals has also been part of this increased cooperation. The WCO Central Enforcement Network (CEN) presents real opportunities to continue to build further in a systematic and advanced way, the exchange of information aimed at increasing the levels of protection to public health provided by Customs services. The provision of accurate information in a timely fashion to operational Customs officers cannot be over-emphasised as it is a vital ingredient towards effective Customs anti-counterfeiting and piracy enforcement activities.

A concrete example where all the factors mentioned above have come into play has been our registration - recordation - of over 15 trademarks with Customs authorities across all 27 European Union Member States as well as patents in selected Member States. This increased awareness by Customs has been a significant contributing factor in enabling Customs officers to seize 1000s of packs of counterfeit Merck pharmaceutical products in the past 18 months. These seizures have led to major international investigations enabling authorities in a number of countries in Europe, the Americas, Middle East and Asia to take action against the criminals behind this dangerous trade. Merck fully supported these investigations at all stages and is very grateful to the Customs officers whose dedication and persistence in intercepting counterfeit medicines is vitally important in the effort to protect the public from organised criminals who seek to profit from this pernicious crime.

Merck is convinced that continued and close cooperation with Customs administrations is the key to a successful strategy in fighting counterfeit crime and protecting public health.

More information
www.merck.com
Germany makes IPR a top priority
... by the German Customs Administration

Multi-layered strategies
Trademark and product piracy is one of the greatest threats to trade and fair competition today. The amount of damage such activity causes to the economy, to the state and to consumers means that the authorities and the holders of the rights themselves need to invest a great deal of effort to combat this form of economic crime. German Customs has not been found wanting in this regard and for years now has been deploying multi-layered strategies to meet the challenge of curbing trademark and product piracy, and has stepped up its efforts to this end in recent years. As such, we are very proud that the WCO Council at its last meeting decided to award the WCO trophy to German Customs in recognition of its work, endeavours and results in this field.

That Germany should have been awarded the trophy at this time is cause for particular pleasure beyond the general delight at having its efforts honoured in the first place considering that the country not only currently holds the presidency of the G8, but has made the protection of innovation one of the key items on its agenda.

The following article describes the results achieved by German Customs last year, how the issue of IPR was dealt with both structurally and from an organisational point of view and just what measures are being used to develop the dialogue between industry and consumer. The article concludes with a brief recap of the G8 summit in Heiligendamm and by looking forward to an initiative planned in collaboration with the WCO as part of Germany’s presidency of the G8.

2006, the most successful year ever!
The figures speak for themselves: a total of 9,164 seizures were recorded in 2006. The value of products confiscated (measured on original price) came to more than 1.1 billion euro. One particularly successful operation stands out here, namely that of the customs officers of Hamburg Harbour, within a matter of just a few weeks, 117 containers filled with counterfeit goods consisting mainly of well known brands of sport shoes, but also including large quantities of fake luxury watches, textiles and toys, with an overall estimated value of 400 million euro (roughly US$500 million),...
were seized. This was the world’s largest known seizure of counterfeit products.

Other operations also played an equally important part in helping German Custom attain its impressive results. One such operation was called “FIFA”, carried out in the run up to the 2006 Football World Cup in Germany. As a part of these operations, selected Customs offices at ports and airports increased their inspection of goods traffic over a specific period of time. The inspections concentrated on particular ranges of goods that had been specified in advance. The Customs offices involved were provided with risk profiles to facilitate their inspection work. Such profiles enable Customs offices to target their efforts at consignments potentially containing fake goods.

Legal basis and organisational structure

Where during a customs control of non-Community goods (goods which do not originate from the single Customs territory of the European Community) there is reason to believe that property rights have been breached, the goods will not be released for circulation or they will be retained (seizure at the border). In other words, the goods are temporarily held back in order to check them and notify the rights-holders. This is generally followed by court proceedings in which the breach of property rights is determined.

In order to allow the Customs authorities to remove any goods which breach property rights from circulation early on, the rights-holder must submit a corresponding application. Germany has established a central office for intellectual property rights dedicated to processing these applications, the Zentralstelle Gewerblicher Rechtsschutz in Munich. The rights-holder must point out detailed features of his product in his application which allow the clearance officers to identify differences between the original and the fake. This information is then transmitted electronically to the Customs offices in Germany, where it can be accessed upon entering a username and password.

The rights-holder should ideally also submit any other information, since the more information that is available the more targeted the risk analysis and the work of the Customs investigation officers can be. Ultimately, finds such as that in Hamburg Harbour are generally the fruit of extensive research by the Customs investigation service and detailed risk analysis.

A central office for intellectual property rights

One of German industry’s most important partners in the fight against trademark and product piracy is the Customs administration with its central office for intellectual property rights, the Zentralstelle Gewerblicher Rechtsschutz (ZGR) in Munich. The ZGR was set up in 1995 and has since been responsible for coordinating seizure procedures at Germany’s borders, procedures that companies can apply for. In the years since its foundation, the number of companies cooperating with the ZGR has risen more than tenfold from 52 in 1995 to 525 today. The ZGR is also one of the leading central offices on the international stage, and enjoys a strong reputation and many years of experience. It is the number one contact point for companies concerned with enforcing their property rights. The ZGR also provides support to associations, organisations and public and private institutions with regard to information dissemination.

The ZGR’s activities include technical briefings for Customs offices with respect to local seizures and further training, close cooperation with the Customs Criminological Office and local Customs investigation units, providing technical support to Customs administrations of other countries, and the provision of technical support relating to legislative changes. It provides support to industry by staging information events and presentations for associations and organisations, exchanging experience with manufacturers of security products, and providing suggestions on how to improve company organisation and product security.

The close cooperation between the ZGR and industry, associations, Customs investigations units and Customs offices ensures that it can continue to add to its rich stock of experience, to
keep a close eye on developments in industry, legal provisions and case law, and to remain close to actual day-to-day practice.

### Raising Public Awareness

Information plays an important role in the fight against trademark and product piracy. This is why the German Customs administration participates in many international exhibitions and fairs to raise awareness about the consequences of trademark and product piracy and provide information about strategies to protect intellectual property rights. For this reason, an information stand entitled “La Piraterie” was specially developed to provide striking examples of the direct damage caused by counterfeit products.

German Customs has also entered into arrangements with various establishments such as trade fair companies. One particularly impressive example of this was the campaign launched by trade fair organiser Messe Frankfurt, entitled “Messe Frankfurt against copying”, for which the ZGR provided both personnel and technical assistance. Thanks to these measures, a growing number of companies are becoming aware of the effective tools available to Customs and are choosing to apply for border seizures. The hard work carried out to educate consumers has helped create a situation where many potential customers are now rethinking their buying patterns, rejecting dubious offers and making their purchases through authorised channels.

### G8 Initiative

The German Chancellor, Dr Merkel, feels a personal commitment to protecting innovation and, as such, made sure that this topic was high on the G8 agenda during the German presidency. It was also discussed at the G8 summit in Heiligendamm, in addition to other important political issues such as development aid for Africa and climate protection. The heads of state and government declared in their summit statement that they welcome the development of an effective system of information exchange intended to lead to better cooperation between the relevant enforcement agencies across the globe.

The core of the German G8 initiative on improved cooperation between Customs and border authorities in tackling product and trademark piracy is represented by the project “Information System on Intellectual Property Rights” (INFO/IPR). This was developed as a concept in close cooperation with the WCO and should ensure the better exchange of data between various Customs administrations, and later the other border authorities, of participating countries. The initiative adopted in Heiligendamm is initially to be restricted to the Group of 8, however, other partner countries will be able to join later. In principle, all WCO member states may participate.

The information system will be built around the WCO’s CEN database. It should result in the standardisation and substantial expansion of data exchange. At the national level, INFO/IPR will help to integrate data flows in an inter-office setting within the Customs administration and keep data consistent. At international level, the system will represent an effective weapon in the fight against trade in counterfeit goods. The greater the number of participating countries, the larger the stock of data in the national databases will be. This will allow Customs administrations and other authorities to conduct better risk analysis and will make the fight against product and trademark piracy more effective.

### Joining Forces

The German customs administration would once again like to express its sincerest thanks to the World Customs Organisation for honouring it with the WCO trophy. This shows us that the course we have chosen is the right one. The award merely serves as further motivation for us to redouble our efforts in the fight against counterfeiting and piracy. We are well aware that we were up against serious “competition” for this trophy but the competition relates solely to the contest for the trophy and not to our common goal. Product and trademark piracy can only be beaten if we join forces and in this regard we will continue to work successfully together on a global scale to prevent the spread of counterfeit products.

More information

www.zoll.de
THE REVISED KYOTO CONVENTION

Two indispensable publications to enlighten you further about THE REVISED KYOTO CONVENTION that entered into force on 3 February 2006

Glossary of International Customs Terms
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New Zealand’s Border Protection Notice System trounces the fake trade

The New Zealand Customs Service (NZCS) regularly intercepts counterfeit and pirated goods at the border. Between 1997 and 2007, NZCS removed about 1.1 million counterfeit goods from the market. Customs officers intercept these items at airports, ports and the International Mail Centre in Auckland.

To help fight counterfeiting, the New Zealand operates a Border Protection Notice System, where companies lodge a notice with Customs to protect their trademarks and brands at the border. This system is proving effective for those companies. "More than 200 notices have been lodged with us that show trademark owners and copyright holders are becoming increasingly aware of how the system can protect their brand," says Customs Manager: Investigations, Terry Brown.

Various brands are targeted by counterfeiters. For example, in 2005 Viacom international Inc lodged a border protection notice for its property, the Spongebob Squarepants characters, with NZCS. "In the first two months of the notice being in force, Customs intercepted over 110,000 counterfeit Spongebob items at the border," says Mr. Brown. Spongebob counterfeit imports have almost dried up because Viacom International Inc lodged a notice. Importers have become aware of the notice and the consequences of importing infringing goods!

Terry Brown says that when a counterfeit or pirated item that imitates a brand on the notice system arrives at the border, Customs officers will detect and detain those goods, the majority of which are forfeited to the New Zealand state. If the rights owner has not lodged a notice with Customs, suspect goods will be released to the importer.

If trademark owners and copyright holders want to protect their brands from counterfeit and pirated products imported into New Zealand, they must lodge a border protection notice with Customs.

Unfortunately no notice means no protection and protection is the best defence!

More information
kim.chambers@customs.govt.nz
Counterfeiting, the internet and the postal dilemma

...a mission impossible for Customs

Setting the scene

In an era of virtual worlds where everything is just one click away, the flow of postal packages is intensifying with the development of internet sales, and this is not making the task of Customs services any easier, particularly when it comes to combating counterfeiting and piracy.

The Internet is fast becoming the world’s biggest superstore, but at the same time it has turned into a shop window and vehicle for counterfeit goods. Hundreds of millions of packages are transported by the postal services each year, and an increasing number of them contain counterfeit or pirated goods. In fact, according to the WCO Secretariat’s statistics, between 30% and 40% of all cases dealt with by Customs in the area of IPR enforcement involve postal traffic.

This is not a coincidence and there are many reasons for this: international legislation which is not robust enough and is ill-suited to the situation; the colossal growth in postal traffic; the fact that it is virtually impossible to conduct risk analyses; the long and often costly procedures that rights holders have to undertake, bearing in mind the small number of items generally intercepted in each individual postal traffic seizure; problems in identifying where responsibilities lie; and a host of other problems.

The result is that when Customs administrations conduct their controls, the only effective tools at their disposal are a sharp blade and a roll of sticky tape!

Cracks in international legislation

International postal traffic is governed by two international instruments:

- The World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).
- The Universal Postal Union’s Universal Postal Convention (UPC).

Article 60 of the TRIPS Agreement, concerning “De Minimis” imports, provides that “Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers’ personal luggage or sent in small consignments”. In addition, Article 51 of the Agreement provides that there is an obligation to control goods only at importation, and if they infringe a trademark or copyright. This means that under the terms of these two Articles there is no obligation to subject small consignments to controls, controls are not mandatory at exportation, and there are restrictions on the scope of the controls limiting them to trademarks and copyright only.

The Universal Postal Convention stipulates, in Article 5, that “...a postal item shall remain the property of the sender until it is delivered to the rightful owner, except when the item has been seized in pursuance of the legislation of the country of origin or destination...”, while Article 25 prohibits, subject to some exceptions, the transportation of certain goods by post, namely: narcotics; live animals; explosive substances; radioactive materials; obscene or immoral articles; and bank notes and other valuables. To date, counterfeit or pirated goods have not been included in the list of prohibited products! Finally,
Article 22 states that "...Postal administrations shall accept no liability for customs declarations in whatever form these are made or for decisions taken by customs on examination of items submitted to customs control".

If international legislation relating to IPR-infringing postal consignments is inadequate, risk analysis is frankly impossible, for three main reasons: no detailed manifest; no manifest supplied to Customs services in advance; and a “CN22” customs declaration that is too vague and thus of no use for targeting purposes.

Even more obstacles along the road

In addition to the legislative shortcomings and the fact that it is impossible to use targeting techniques, there are two other major obstacles hindering Customs’ actions.

The first obstacle concerns the difficulty of taking legal action in cases where counterfeit goods have been detained. Legal proceedings are costly for rights holder given the limited number of counterfeit or pirated items contained in a postal consignment. Doing so would cost the rights holder more than he had lost as a result of the counterfeiting, particularly as there is no simplified procedure, at the international level, for the rapid and low-cost destruction of counterfeit goods.

The second and principal obstacle relates to the quantity of packages handled by postal services. As an example, every night as many packages pass through Zaventem Airport in Brussels (Belgium) as there are Customs officers in Europe. Faced with tons and tons of small postal items, limited staff especially at night, and an almost nil possibility to do any effective targeting, the only option open to Customs is to physically inspect goods. This becomes an impossible mission due to the sheer volumes of postal traffic.

Co-operation is the beginning of the solution

The post is becoming the most frequently used delivery method for goods purchased on the Internet. Considering that one in two pharmaceutical products bought over the net is a fake product, existing legislation needs to be brought up-to-date as a matter of urgency. In this regard, the WCO Secretariat has opened discussions on this matter with representatives of the Universal Postal Union, in order to bring about significant and pertinent changes to existing international legislation. The WCO is hopeful that these discussions will prove fruitful given the excellent relationship that has existed for many years between the Organization and the Universal Postal Union.

More information
christophe.zimmermann@wcoomd.org
Art has counterfeiters in sight

The French artist Maât has turned her attention to counterfeiting, reflecting her imagination and musings on the subject by creating a modern art sculpture.

She explains the symbolism behind her work as follows:

“The genuine watch is displayed from the safety of a sealed recess. It is an objet d’art, a symbol of dreams, craftsmanship and quality work. Yet it is also an inaccessible object within the sights of counterfeiters seeking to copy it. The recess protects this gem from the tumbling mountain of watches, as if to ward off the danger of counterfeiting. The entangled surfeit of crushed fake watches represents abundance and with it the flight of uniqueness and of the dreams elicited by the objet d’art.

My approach in this particular instance is to bring the audience face-to-face with the object of the crime. Whilst the destruction of the copies highlights a repressive image, the fake good, previously elevated to the status of a high-quality product, now merely features as a raw material used in the genuine article. This unsettling work of art, on which the counterfeiters have set their sights, is intended to set the visitor thinking, with a message going far beyond that of enforcement alone. The artist and state representative are working in symbiosis with a preventative goal in mind. Their aim is to raise awareness rather than to educate.

Why opt for counterfeit watches? Even before the appearance of fake toys or medicines directly threatening the health and safety of individuals, fake watches in circulation on the market were already severely compromising the watch-making industry, with twice as many fake as genuine articles being produced. Looking beyond the tangible product, the trademark, an intangible asset, must be valued for its appeal and for the confidence it inspires.

This sculpture is therefore an emblematic work, unconditionally highlighting the essence of the genuine article tainted in a market that is difficult to monitor given the plethora of copies available. This innovative approach — Art within the counterfeiters’ sights — is an allegory of the determination of Governments to fight this global threat. Its aim is to curb and disrupt counterfeiting in France through an original, forceful and even uncomfortable message directed not only at counterfeiters, but also at consumers who are as much accomplices as victims.”

This work of art was produced with the assistance of the French Customs administration, which donated a batch of counterfeit watches seized in 2006 to the artist, and of private companies such as Bartin, Cari, Sika and Aéroports de Paris. The holders of infringed trademarks agreed to be involved in the project. The artist worked on the piece on the premises of Roissy Airport (France), under the constant supervision of the Customs service. Some 4,717 watches were used to create this sculpture.

The sculpture was officially unveiled at the Union des Fabricants’ (UNIFAB) Museum of Counterfeiting, in the presence of the Chairperson of UNIFAB and representatives of the watch brands involved. This work of art may be viewed at the Museum in Paris (Customs officers are admitted free-of-charge).

More information
www.sculpteurmaat.com
www.douane.gouv.fr
www.unifab.com
Capacity building in Angola advances

Following a request from the Angolan Customs administration for capacity building assistance with respect to the implementation of the WCO SAFE Framework of Standards, a WCO diagnostic team visited the country recently in order to diagnose the Customs service and become better acquainted with the reform and modernisation process already underway in Angola. During the visit, the WCO team met with the Minister of Finance, Dr. José Pedro de Morais Júnior, the National Director of Customs, Dr. Sílvio Burity, amongst others.

The Angolan Government’s Customs Expansion and Modernisation Programme (CEMP) in partnership with Crown Agents has achieved impressive results, in particular the significant increase in Customs revenue from US Dollars 215 million in 2000 to US Dollars 1.061 billion in 2005. These positive results stem largely from Angola’s decision to introduce IT systems and risk management, to reform their law and procedures (a new Customs Code entered into force in January 2007), to invest in human resources, and to reinforce their integrity programmes. Today, Angolan Customs has a modern management that establishes priorities and balances the control and facilitation of international trade effectively. It is a very functional Customs administration with well defined and standardised procedures and a high degree of satisfaction, motivation and commitment from officers for the modernisation process.

Nevertheless, the Angolan population and its economic operators are not benefiting in full from the results gained through Customs modernisation. Despite the computerisation of Customs declarations, the average importation time is still too high and these delays are largely attributed to stakeholders and the port administration. On the whole, this is prejudicial to the CEMP as it makes it impossible for operators to obtain any trade facilitation benefits. Although Customs is undergoing a very successful modernisation process, the same is not happening with other government stakeholders. Taking into account that Angola’s economic growth depends to a large extent on the flow of its external trade, the Angolan Customs authority will have to exercise a national leadership role in the formulation of government policy with a view to encouraging greater efficiency and speedier processing of the country’s external trade.

More information
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THE ISTANBUL CONVENTION

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Mutual recognition, a key concept in the WCO SAFE Framework of Standards to secure and facilitate global trade, became a reality on Friday 29 June 2007 when New Zealand Customs Service (NZCS) Comptroller, Martyn Dunne, and United States Customs and Border Protection (USCBP) Commissioner, W. Ralph Basham, signed a bilateral supply chain security Mutual Recognition Arrangement (MRA). The ceremony was witnessed by Members of the Council - the WCO’s supreme decision-making body - who had gathered in Brussels at the Organization’s headquarters for their annual sessions.

According to NZCS Comptroller, Martyn Dunne, the MRA will assist New Zealand and the United States to safeguard global trade and will provide closer cooperation and coordination between the USCBP’s Customs Trade Partnership Against Terrorism (CT-PAT) programme and the NZCS Secure Exports Scheme (SES). The arrangement provides reciprocal benefits to the parties, and will benefit both industry and government. USCBP Commissioner, W. Ralph Basham, believed that Customs-to-business partnerships were an essential component of today’s global economy and that the MRA would enhance supply chain security and facilitation for the business community in New Zealand and the United States.

In welcoming the arrangement, WCO Secretary General, Michel Danet, hoped that from a world trade perspective, this would be the beginning of many such arrangements across the globe as mutual recognition was the natural next step after implementation of the authorised economic operator concept, an integral part of the Framework of Standards.

The signing of this historic arrangement between New Zealand and the United States, the first of its kind internationally, celebrates a major step forward towards the practical implementation of the WCO SAFE Framework of Standards. In this regard, the WCO congratulates New Zealand and the United States on this fine demonstration of Customs-to-Customs cooperation which will have a positive spin-off for Customs-to-business relations.

More information
www.cbp.gov
www.customs.govt.nz

>> At last, the first mutual recognition agreement!
WCO represented at inaugural Commonwealth event on trade facilitation

Senior officials from Customs administrations, port authorities, national business associations and trade ministries recently met in Singapore for the inaugural Commonwealth-Singapore Third Country Programme on Trade Facilitation. The event was organised to discuss the main trade facilitation issues which affect the export/trade competitiveness of a range of developing and smaller Commonwealth countries and to enable practical solutions relevant to their national realities to be devised. The event also provided an ideal forum to identify best practices in trade facilitation which were reflected in the country presentations and case studies shared by participants.

An exhibition allowing leading multilateral institutions in trade facilitation, such as the WCO and UNCTAD, as well as local Singapore trade facilitation service providers, to showcase their tools and services to an audience of trade facilitation end users was held in the wings of the event.

Participants from 20 Commonwealth Member countries attended the Programme. They represented Antigua and Barbuda, Cameroon, Ghana, India, Jamaica, Kenya, Malawi, Mauritius, Mozambique, Nigeria, Papua New Guinea, Pakistan, St. Vincent and the Grenadines, St. Kitts and Nevis, Sierra Leone, South Africa, Sri Lanka, Uganda, Zambia, and Vanuatu.

The WCO was represented by Mr. Takashi Matsumoto, Head of the WCO Asia/Pacific Regional Office for Capacity Building (ROCB), who gave a presentation on the WCO’s trade facilitation tools.

More information
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A Fellow from Ghana shares her experience

...by Nana Birago Opoku Manu

Participating in the 44th WCO Fellowship Programme has been a milestone in my career as a Customs Officer. My utmost impression about the Fellowship was that it was a well organised and structured programme.

While in Brussels, I got introduced to the initiatives and organisational structure of the WCO and had the rare opportunity to experience the work culture of the Secretariat. The ambience of diplomacy is one thing I will never forget. This experience has indeed raised my level of awareness and understanding of the WCO and the skills I acquired have also brought me renewed confidence to utilise every opportunity to function as an effective manager within the Ghana Customs administration.

Away from the academic programme, I also had the chance to interact socially with the staff of the WCO Secretariat as well as other Fellows. I shared ideas with a lot of nice people from different parts of the world: new cultures were learnt and most importantly, my network as a Customs officer has greatly been enhanced.

My stay in both Brussels and Gothenburg in Sweden (where I spent 2 weeks of the Programme) were memorable experiences. Both cities were genuinely hospitable, which brought me to the realisation that though we come from different parts of the World, Customs is one big family. There is no doubt that the experience and fun we shared will remain as indelible imprints on the minds of all the Fellows.

I wish to use this opportunity to express my gratitude to the WCO, Swedish Customs and my home administration for making it possible for me to attend this Fellowship Programme. It certainly was a great honour, an enjoyable personal experience, and a boost to my continued career at Customs.

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WCO Members scoop top positions at regional organisation

János Nagy, Director General of the Customs and Finance Guard in Hungary, and Ivana Javor, Head of Department at the Customs Directorate in Croatia, were elected Chairperson and Vice Chairperson respectively by the Joint Cooperative Committee, the highest decision-making body of the Southeast European Cooperative Initiative (SECI). This regional centre for combating trans-border crime is located in Bucharest (Romania) and is headed by Mitja Mocnik, the Director, who was also re-elected at the same time to serve a second mandate.

The SECI Centre’s mission is to support common trans-border crime fighting efforts of SECI participating countries in order to improve the business environment in Southeast Europe and make it more attractive for investments with a view to promoting economic and political stability in the region. SECI currently has 12 member states and is unique in that it establishes a forum for Customs and Police to work together in direct cooperation on projects of mutual importance. This operative collaboration greatly assists crime fighting programmes in the region and closely follows the guidance and counsel given by the WCO and Interpol, both permanent advisors to the SECI Secretariat.

More information
www.secicenter.org

My rewarding internship at WCO Headquarters

From 5 March to 4 May 2007 I had the opportunity to undertake a two-month internship at the WCO which was meant to assist my doctoral dissertation “Customs law of the East African Community in light of WTO law and of the revised Kyoto Convention” which I was busy writing.

During my internship I was able to discuss pertinent issues with a number of experts at the Secretariat, particularly those working in the Customs Valuation and Rules of Origin sub-directorates. As part of my research, I also held discussions with a number of delegates attending meetings at the WCO especially those from EAC (East African Community) and SADC (Southern African Development Community) countries. Moreover, the Secretariat gave me access to all the books and many of the documents in the WCO’s main library. I also had the privilege to observe at the 2007 WCO PICARD Conference, the 178th Session of the Permanent Technical Committee and the 24th Session of the Technical Committee on Customs Valuation.

This exposure, collaboration, discussion and research helped me not only to enhance my knowledge on Customs valuation and rules of origin, but also to learn more about other dimensions of customs law and policy such as security and capacity building. I am therefore truly grateful to the WCO Secretariat for their kind assistance.

The author, who is from Uganda, is writing his doctoral thesis at the University of Münster (Germany) where he also acts as an assistant coordinator for the University’s Master of Customs Administration degree programme.

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Senior Government officials, distinguished guests and members of the media gathered together at the launch of the Customs administration of Dubai’s new Client Accreditation Programme. At the opulent event, Mr. Abbas Makki, Dubai Customs’ International Relations Director, delivered a congratulatory speech on behalf of the Secretary General of the WCO who was unable to attend the launch owing to prior pressing commitments. Nevertheless, Mr. Danet’s speech was considered highly motivating and enthusiastically received. The launch was well attended by the Programme’s partners and a large media contingent.

Launching a new programme of this nature and its inherent benefits for international trade is clear evidence of Dubai’s firm commitment to the principles and excellence of the standards promoted by the WCO. It also serves to graphically demonstrate the degree to which Dubai has remained sharply focused on the realities of world trade today. The country continues to maintain a forward looking approach with the insight to anticipate what is needed for actual implementation of the WCO Framework of Standards to secure and facilitate global trade.

Dubai Customs is moving steadily ahead behind the scenes and developing their version of the Authorised Economic Operator concept which will position the administration to act as a vanguard in implementing the full provisions of the WCO Framework of Standards successfully. Thanks to its political will, foresighted policy makers, and frontline officers, Dubai Customs has every right to be extremely proud of its achievements which will hopefully serve as an example to be emulated by others in the region and around the world.

More information
Rahaf.jaber@dxbcustoms.gov.ae
Customs administration of Kazakhstan

Mission
The Customs authority carries out the following tasks:
• Participates in the development and execution of Customs policy;
• Ensures, within the limits of its authority, the economic safety and sovereignty of the country;
• Ensures compliance with Customs and other legislation;
• Ensures observance of tariff and non-tariff regulatory measures set forth by legislation with regard to goods and means of transport conveyed across the border;
• Fights against Customs offences in compliance with legislation;
• Carries out and improves Customs clearance and control procedures, as well as the creation of conditions that promote intensive turnover of goods crossing the border;
• Exercises currency control within the limits of its authority;
• Ensures the implementation of Kazakhstan’s international obligations;
• Participates in the development of international agreements pertaining to Customs matters as well as cooperation with Customs and other competent bodies of foreign states including international organisations engaged in Customs activities;
• Takes part in the implementation of the single budget policy, and the development of the material, technical and social basis of the Customs authority;
• Ensures, within the limits of its competence, measures to protect the national security, life and health of people including the preservation of the environment;
• Carries out radiation control at the border;
• Carries out other tasks stipulated by legislative acts.

Strategy
• The formation of a stable efficient functioning Customs system that facilitates the country’s development and competitiveness through the application of international standards and world best practices;
• The implementation of measures aiming to reduced cost and time for Customs clearances and to simplify Customs procedures and control.

Member of the following international/regional organisations
• Eurasia Economic Community
• Shanghai Cooperation Organization
• Economic Cooperation Organization
• Central Asia Regional Economic Cooperation

Contact
Director General
Mr. Kozy-Korpesh Karbuzov
Appointed on 6 June 2007

Total staff
5974 agents

Official address
Customs Control Committee
Ministry of Finance
Beibitshilik Street 10
010000 Astana
Kazakhstan

Date of establishment
12 December 1991

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Acting Head of International Relations
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E-mail: sbiyekenov@q0100.customs.kz
Website: www.customs.kz

International Conventions signed by Kazakhstan relating to Customs matters
Member of WCO: 30 June 1992
Harmonized system Convention: 26 March 2004
Customs Convention on Containers: 25 January 2005

General information
Official name: Republic of Kazakhstan
Capital: Astana
Official language: Kazakh and Russian
Area: 2 724 900 km²
Population: 15 394 600 million
Currency: Tenge
National Day: 16 December
ISO code: KZ

More information
www.customs.kz
The President of BASC briefs us...

The World BASC (Business Alliance for Secure Commerce) Organization (WBO) is a private sector/Customs partnership that was established to promote the security of international trade in co-operation with governments and international organisations. It is a non-profit organisation, constituted in the State of Delaware, USA, with over 2000 member companies in 16 countries throughout South and North America.

The purpose of this private sector-led organisation is to secure and facilitate global trade by developing and administering security standards and procedures applied to the international supply chain, in partnership with governments, Customs administrations, enforcement agencies and bodies representing international business.

WBO Executive President, Ms. Mayra Hernández de Cavelier, represented the Organization at meetings of the former WCO High Level Strategic Group and continues to represent the BASC at meetings of the WCO Private Sector Consultative Group (PSCG). WCO News asked her about the BASC’s involvement in the implementation...
IN CONVERSATION

W.N.: How can they implement the provisions of the WCO Framework in order to enjoy Authorised Economic Operator status and what benefits can they derive from that status?

WBO: BASC companies have successfully adopted security standards that meet or exceed those under the WCO Framework’s AEO concept. This success is in part due to the support that is available to all BASC members through the BASC chapters’ infrastructure of training programmes and BASC certified auditors.

A study by the Cross Border Research Association found that BASC companies achieved tangible benefits ranging from a reduction in theft, losses and damages, to improved company image and credibility with business partners (see chart page 37).

Through the above mentioned pilot projects, we are seeking a legal framework, in conjunction with the concerned Customs administrations, to identify specific benefits for AEOs as well as establish a basis for mutual recognition arrangements with other countries.

W.N.: What relationship do you have with Customs administrations with which you have partnerships? How much value do they place on the BASC certification system?

WBO: BASC has signed cooperation agreements with 16 Customs administrations in the Americas and Europe. These administrations have taken a great interest in our work and have collaborated in the design of our BASC standards, third party auditor certification system, and training programmes. They have also visited and toured BASC member facilities and exchanged information with BASC companies.

In addition, these Customs administrations have been given access to our BASC database of certified companies for use in developing risk assessment systems. The Customs collaboration with BASC has been an essential element in the growth and expansion of BASC.

W.N.: What are the BASC’s medium and long-term ambitions, and your prospects and plans?

WBO: For many of our BASC member companies in developing countries, participating in global trade implies that they must be ready to adapt and revise their processes. This is done with the view towards improving productivity and meeting international norms, such as those required to qualify as an Authorised Economic Operator, in order to take advantage of business opportunities at both national and international level.

Various business sectors have identified BASC as a ready platform from which the Framework of Standards can be quickly launched in many countries. BASC has 11 years of experience managing supply chain security standards and a comprehensive certification process requiring audits by certified third-party auditors. In addition, BASC has a strong organisational infrastructure in place, including experienced leadership, technical know-how and professional staff support. Its legacy of successful business-customs partnerships in 16 countries and solid working relationship with international business organisations,
uniquely qualifies it to serve as the platform for the global Framework of Standards-Authorised Economic operator (FOS-AEO) effort. BASC welcomes the opportunity to serve as that platform. With that in mind, it is developing pilot projects with SMEs with the goal of using FOS-AEO and BASC to facilitate global opportunities and growth for these companies and promote economic and social welfare in their countries.

Given the above, our immediate goal is to continue to work closely with the WCO and Customs administrations around the world in pursuit of the broadest and earliest implementation of the FOS-AEO concept. Beyond that, we have three main ambitions:

• That BASC companies receive automatic AEO status at the time of application, as long as they can demonstrate their BASC certificate is in good standing.

• That BASC certified auditors be approved to conduct AEO certification audits, where Customs administrations lack the necessary audit resources.

• That goods originating in a non-AEO country and shipped by a BASC certified company receive AEO benefits at the destination country, as long as the importer is either BASC or AEO certified.

W.N.: Can you give us any examples of SMEs which meet the standards set by the WCO Framework?

WBO: The testimony from Comexa Foods/Amazon Pepper speaks for itself (see page 38)

More information
www.wbasco.org
Testimony of an SME

Our company was founded in 1992 in Cartagena, Colombia motivated by a personal desire to go into business for myself. My wish became a reality after acquiring 5 years of work experience with an aquaculture shrimp farm operation and learning about the efforts and struggles of an agricultural-industrial business. Our company manufactures Amazon pepper hot sauces and other pepper ingredients, as well as dehydrated products for the dry soup industry. I credit my company’s success to the support from friends, family and customers who placed their trust in us and in our continuing efforts to make dreams come true. Comexa Foods/Amazon Pepper is the product of an intense belief that success is our destiny regardless of any hardship we may encounter, whether macroeconomic, climatic, circumstantial or even health related.

BASC in one phrase, for us means "peace of mind"!

Peace of mind to know that we are not alone in this effort of working hard, producing quality products and serving as ambassadors to the world for our company and its products. The friendship and charisma of our team has been evident at every one of the more than 100 international food shows we have attended during our 15 year history. Peace of mind to feel we are working together as one, with other BASC members in other countries, along with their police and Customs; as well as local trucking companies, freight forwarders, Customs brokers, ports and shipping lines. For Comexa, BASC has been the most important security initiative in our country, providing the 99.99% honest hard working people of Colombia with a system they can depend on to automatically detect and reject any sign of illegal activities to such an extent, as I understand, that criminal organisations are unable to use the country’s legitimate exporting system as successfully as they were able to do so before BASC was created.

In conclusion, BASC to us, besides peace of mind, helps us ship safely and securely to foreign countries, especially the USA, our largest market. Without BASC, it definitely would not be that easy for us to ship up to 7 containers a week. BASC means that the system has more information about our supply chain, assuring that there are security standards in place throughout the entire logistics chain. It means credibility and timeliness to our customers. In our view, BASC has been a symbol of economic development and maturity of a whole country and in many other countries as well! Thanks to BASC, the exponential growth in our country’s exports during the last 5 years has been possible. The BASC programme and its security standards have prepared us well to meet the FOS-AEO requirements. We are ready and hopeful that when our national Customs administration implements the AEO programme, we will not only qualify as an AEO, but also be eligible for any additional benefits and mutual recognition from Customs administrations around the world.

I thank all of those involved in this huge effort!

Best Regards,

Giorgio Araujo
General Manager

More information
www.amazonpepper.com
www.comexa.com
Back home earlier than expected...

Chriticles Mwansa, former Director of Tariff and Trade Affairs, left the WCO Secretariat before completing his term of office to take up a high-level position in the Zambian Revenue Authority. His successor, Antoine Manga Massina will take up his post in January 2008. Before leaving the WCO Secretariat, Chriticles Mwansa agreed to answer a few questions posed by the WCO News editorial team.

W. N.: What was your greatest success or sense of achievement during your three years in the post?
C. M.: My greatest satisfaction came from a wide spectrum of successes that were achieved in spite of the challenges that I mentioned earlier. These achievements included increased participation by representatives from developing and least-developed Members in WCO technical and policy issues. By way of example, the increase in the number of cases tabled before Committees by these Members is testimony to this fact. I am also happy at having contributed to raising the profile of our Organization and its instruments with both Governments and the private sector during my tour of duty. Indeed, the development and refining of certain trade instruments relating to the Harmonized System, Customs valuation and origin gave me great comfort as this represents my Directorate’s collective contribution to improving and enhancing the World trading system. Of course, the successful implementation of the 2007 version of the Harmonized System will always be part of my success story too.

W. N.: Do you have any regrets about areas of special interest to you whose outcome was not quite as you would have hoped, or which you were unable to bring to fruition?
C. M.: I have no specific regrets that come to mind. My plans for my five-year term are still on course and those that I have not managed to achieve in these three years are still on track to reach fruition within the time-frames which I set when I took office in 2004. There are sound systems in place and the personnel that remain behind as well as those that will join the Organization after my departure will help to realise the strategic plans both of the Directorate and the Organization as a whole. In fact I am quite sure that the work undertaken by the Directorate of Tariff and Trade Affairs will continue to add value to the world trading system through its contribution to trade facilitation and the role it plays in safeguarding the international trade supply chain.

W. N.: How will you use your experience gained at the WCO in your new position back in Zambia?
C. M.: Every experience enriches a person’s personal growth and career path. Although it may seem that I have been a Member of the WCO Secretariat for a short time only, what I have gained...
IN CONVERSATION

W. N.: What message would you like to pass on to your successor?
C. M.: Firstly, there is no greater asset than human capital in labour intensive organisations such as the WCO and I would implore my successor and those that are responsible for managing the affairs of the Organization to respect our valuable human resource as they are the primary reason we as management are able to achieve the impossible. Secondly, I would advise my successor to be as pragmatic as possible in his or her approach to work while being sensitive to the political implications of certain actions. Thirdly, I would urge my successor to take particular care not to represent a specific segment of the WCO Membership in the policy-making process, but rather to present the state of affairs in an impartial way as this will enable the process to absorb all interests equally and result in the formulation of policy that is fair and acceptable to all WCO Members. Fourthly, it would be amiss of me if I did not express the utmost importance of sound management principles underpinned by good governance ideals as this will greatly assist my successor in carrying out his or her duties effectively and without being compromised in any way. Lastly, I would leave my successor with the life motto that has guided me over time: “Whoever you are, wherever you are, and whatever job you do, do it sincerely and efficiently”. My best wishes to Antoine Manga Massina.

Thank you all for your loyal support and friendship.

during this period will be very useful to my future working environment including the role I will play in improving the Zambian economy. More importantly, I have made many friends and associates that I am sure I can count on in the future both from a personal and an official level. In fact, my expanded network of contacts and broadened experience will contribute positively to the responsibilities that await me on my return to Zambia. I truly believe that what I have gained during my term at the WCO will be put to good use and be of benefit not only to me but to mankind too.

W. N.: What are some of the inspirations that you gained from your stay at the WCO?
C. M.: Without a doubt, the international culture that exists in the Secretariat has inspired me greatly. I admire the way people from different cultural and language backgrounds blend together and develop an organisational culture which is supportive and laced with human kindness. Indeed, I have also valued my interactions with all players involved in international trade activities including the institutions that I have had many dealings with over these three years. But most importantly, my personal interactions with many different people during my stay in Brussels and those I met on my official missions across the globe have inspired my decision to pursue my studies towards an MBA. In this regard, I now look forward to the day my title changes from that of Mister to Doctor (PhD), God willing.

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Look-alikes, counterfeits in disguise?

Today’s consumers are constantly prowling around to see what’s new on the market. The quest to satisfy these consumers drives innovators to create new products at an ever increasing rate. Imitators are just as eager to relieve these consumers of their hard-earned cash and they do this by copying branded products but not slavishly, just enough to confuse the consumer into thinking this is the real thing or it looks so similar it’s probably “almost” the real thing and anyway the price is good. Look-alikes are disguised to deceive, but aren’t these the same tactics used by counterfeiters and pirates?

WCO News decided to put the trade in look-alikes under the microscope and invited Olivier Vrins, an IPR lawyer who has been looking into the rules applicable to look-alikes, to tell us more about these products and elaborate on their link to IPR infringements.

WCO News: When can we say that there has been an infringement of a trademark, a copyright, or a protected design?

Olivier Vrins: It might be useful to start off by defining what trademarks, copyright and protected designs actually are. After all, it is with reference to the substance of, and the reason for these rights, that infringements against them have been defined.

A trademark is a distinctive sign applied to a product or service. It may be verbal, or consist of a slogan and/or a logo for example. There are even colour trademarks, three-dimensional trademarks relating, for example, to the shape of a product or its packaging, olfactory trademarks and sound trademarks. The main purpose of a trademark is to distinguish the goods or services of one undertaking from those of other undertakings. It follows from this that any use in trade, without the consent of a trademark’s owner, of a sign identical or similar to that trademark for identical or similar products, is in principle prohibited where such use is liable to give rise to consumer confusion as to the origin of the goods or services at issue. This risk of confusion is presumed to be present in cases where the trademark is slavishly imitated on goods or services identical to those for which the trademark has been duly registered.

In addition to playing this distinguishing rôle, the trademark also provides information to consumers – albeit indirectly – about the quality of the goods and services with which it is associated. On the grounds that this “guarantee” function performed by the trademark also merits protection, an increasing number of legislators have felt compelled to prohibit the use of a sign which is identical or similar to a trademark, even for goods or services which are different from those for which the trademark was registered, in cases where such use would either be damaging to, or cause undue benefit to be derived from, the repute of the trademark. Logically, therefore, renowned trademarks will enjoy greater protection than trademarks which have a less elevated reputation. Not only will the existence of a risk of confusion between a reputed trademark and a sign resembling it be more readily accepted, but also the risk of confusion will not be a sine qua non for concluding that a trademark of this kind has been infringed.

Copyright can be innate to any original work. In this context, “work” must be defined in a very broad sense, covering anything from an artistic creation to an industrial item. Therefore the packaging of a product, or its shape, could be copyrighted provided that it is original. In essence, the purpose of copyright is purely and simply to reward the creativity of the author of a work, recognising that individual’s entitlement to object to any use of that creative work, or to agree to it subject to conditions stipulated by him or her. Any reproduction or communication to the public, without the author’s consent, of the elements which give the protected work its originality will constitute counterfeiting (or “piracy”). Thus, with copyright as with trademarks, slavish imitation is not a prerequisite for counterfeiting. However, the risk of confusion is not relevant to the assessment of a copyright infringement.

Design has to do with the appearance of the whole or a part of a product, resulting in particular from the features of the lines, contours, colours, shape, texture and/or materials of the product and/or its ornamentation. A design can be two-dimensional or three-dimensional (also known as a model). As a general rule, designs are eligible for protection under design rights only if they are new (i.e., if no identical design or model has been divulged to the public before the date on which the design or model for which protection is claimed was divulged to the public for the first time) and have individual character (the overall impression which the design or model causes in the informed user differs significantly from the overall impression created in said user by any design or model which has been made available to the public). Broadly speaking, a registered design confers on the holder the exclusive right to use the design and to forbid third parties to use it without consent in the course of trade.

Finally, I should perhaps conclude this overview of the main categories of intellectual property with a brief reference to patents. A patent protects the technical result of a product or
process which is new, involves an inventive step and is capable of industrial application. The patent also gives its owner exclusive rights over the use of an invention in the course of trade.

W.N.: What is a look-alike?
O. V.: Look-alike is not, strictly speaking, a legal concept. As far as I am aware, you will not find it in any laws or regulations dealing with intellectual property. IPR-related international conventions and European Community (EC) laws make no reference to it either. Nevertheless, this term has found its way into legal parlance in recent decades. It refers to a product which is - to a greater or lesser extent depending on the case - similar in appearance to a competing product. The point of a look-alike, often denied but no less true, is to associate or link the two products in the mind of the consumer with the intention, of course, of procuring an advantage for the copier. This is a strategy which carries certain risks.

It is not uncommon for a look-alike to generate more than a mere association in the minds of consumers, in fact causing them to confuse the products or to believe that they are manufactured by the same company. Where this occurs, unfair competition law or, where appropriate, trademark law, can provide the basis for a claim for injunction and damages. Even where there is no risk of consumer confusion a look-alike may still infringe a copyright or a protected design; it may even be perceived, in extreme cases, as parasitic competition which is contrary to honest trading practices. Also, quite apart from the confusion they sometimes generate, look-alikes may make the original goods which have been targeted more commonplace which, especially in the luxury goods market where exclusivity is part of the appeal, can prove highly damaging. A recent study in the United Kingdom demonstrated, unsurprisingly, that the average consumer has no complaints about look-alikes provided, of course, that he or she has not been taken in by them. Less than 40% of those surveyed consider that, in the fashion goods sector, look-alikes devalue the goods they imitate, and only 30% regard this as a parasitic activity which should be dealt with more severely. The creators, of course, are a lot more numerous in condemning these practices.

W.N.: Do unfair trade practices always relate to counterfeiting, or are other regulations involved as well?
O. V.: Unfair competition law goes far beyond the realms of counterfeiting and look-alikes. It may contain provisions which are entirely unconnected with these issues, for example laws on loss-leaders and on “two-for-one” and similar offers come to mind. Obviously, any action which is contrary to honest trading practices will not automatically constitute counterfeiting. In principle, however, national laws on unfair competition should contain a general provision requiring courts to punish any act contrary to honest trade practices, by which a trader causes damage, or is liable to cause damage, to the business interests of another trader. In my view, there can be no doubt that counterfeiting is a perfect example of unfair competition. The close link between counterfeiting and unfair competition law is clearly demonstrated by the Paris Convention for the Protection of Industrial Property of 20 March 1883. In addition to various provisions relating, inter alia, to trademark law, this Convention contains in particular an Article 10bis, which requires the Signatories to the Convention to assure to nationals of such countries “effective protection against unfair competition”. This Article stipulates that “any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition”, including “all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor”.

W.N.: What is it that tips the scales between infringement of copyright or trademark and unfair trade practices?
O. V.: As I mentioned it would seem difficult to find, although there have been rulings to this effect, that counterfeiting does not constitute an act of unfair competition, at least in cases where the perpetrator is a trader. Therefore in the area under discussion, the usefulness of unfair competition law does not lie, or at least not solely, in prohibiting IPR infringements as acts contrary to honest trading practices, but more importantly in offering adequate protection to those who cannot avail themselves of any intellectual property rights and are victims of parasitic or “predatory” acts committed against their products or their business by other traders. There are also cases where the circumstances surrounding the promotion and marketing of goods, which in principle are not relevant in terms of judging whether or not an intellectual property right has been infringed,
in themselves constitute unfair competition independently of any resemblance between products. In this context also, trade practices law represents a useful complement to intellectual property law.

W.N.: What means do we have at our disposal for punishing practices aimed at profiting from consumer confusion?

O. V.: As we have seen there may, depending on the case, be a series of legal grounds for taking action in the following circumstances: copyright, protected design, trademark (verbal trademarks, figurative trademarks, shape trademarks, colour trademarks, etc.), and unfair competition law. To this must be added the law of tort, under which any damage caused to a person through action of another must be repaired by the person whose fault it was that the damage occurred. Legislators around the world agree on one principle at least: each and every person, in business as in other areas of life, is expected to behave in a responsible and reasonable fashion, and this includes abstaining from any negligent behaviour and, even more so, from any intentional fault, which causes harm to another person.

The Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 (the TRIPS Agreement) requires WTO Members to make provision for various types of injunction and damages claims to be brought in the civil courts in order to repress any infringement of intellectual property rights. The TRIPS Agreement also requires Member States to make the wilful infringement of a trademark or copyright a criminal offence and adopt penalties which are severe enough to act as a deterrent. These are minimum standards of protection which increasing numbers of national legislators have strengthened over time, for example by making the wilful infringement of any intellectual property right a criminal offence, as a number of countries have done.

W.N.: Tell us about the most striking examples you have come across, and the judgments handed down in these cases.

O. V.: I could write reams on the Lego group’s legal battles with various competitors around the world, which are still going on in fact. These are really interesting, but extremely complex cases, built around copyright, patent law, protected designs, unfair competition law, the look-alikes issue and the issue of adaptable products. I would hate to bore WCO News readers to death with intricate legal considerations – assuming I have not done so already – so I will focus instead on another case, dealt with by our firm, which has been the subject of several rulings by the Belgian courts. It concerned the sale of lawn products distributed by Company X under the name “Green”. A competitor who owns the more long-standing trademark “Evergreen” was not too happy about this state of affairs, particularly as it considered that the visual appearance of Company X’s products resembled that of its own goods, in a number of respects.

There was obviously no question of slavish imitation in this case. However, that did not prevent the judges from finding the distributor of the “Green” products guilty of unfair competition and infringing the “Evergreen” trademark. The latest development is that the company at fault has been ordered to pay damages to the tune of 185,000 euros. Given the financial interests at stake, readers will not be surprised to learn that the case has gone to appeal. Equally, I could have entertained you with another interesting case, involving the imitation of tractors! The files which land on our desks bear witness to the fact that the look-alike merchants are targeting every sector including perfumes, textile goods, foodstuffs, and alcoholic beverages.

W.N.: In your experience, are more and more cases being brought before the courts in this field and, in parallel with this, are the penalties getting steeper and actually acting as a deterrent?

O.V.: In the face of the increasing range and greater effectiveness of the measures put in place by legislators around the world to combat out-and-out counterfeiting, by this I mean slavish imitation, we are increasingly seeing the counterfeiters attempt to slip through the net by making the packaging or the appearance of their products slightly different from their target, whereas before they would not have hesitated to reproduce faithfully every single characteristic. Over recent years the battle against blatant counterfeiting has intensified, at many different levels. The range of penalties is still far from satisfactory. Some legislators are still not aware of the problem, and this applies even more where look-alikes are concerned. Nevertheless, there are some signs of a growing awareness. For example the European Union, which has already issued a Directive consolidating measures for ensuring the enforcement of intellectual property rights in the civil courts, is about to
do the same with regard to criminal law by strengthening the deterrent nature of the penalties. In the United States, Congress is also talking of increasing the criminal penalties in this area. Some countries, such as Italy and Estonia, have gone a step further by bringing the consumer into the frame, making it a criminal offence to knowingly purchase counterfeit goods.

W.N.: Does existing jurisprudence tend to favour the “copiers” or the right holders?
O. V.: In this field, as in any other, the courts are largely dependent on the legislator. There is nothing a judge can do if the legislator has failed to put in place procedures and penalties. The counterfeiters will always exploit any loopholes in the system. For example, they are now seeking to take advantage of a recent judgment of the European Court of Justice - which, it must be said, is badly worded and has been implicitly disregarded a few months ago by the District Court of Helsinki, among others - to “legitimise” the transit of counterfeit goods. At a time when the executive authorities and the business world are pulling out all the stops to increase consumer awareness of the pernicious effects of counterfeiting, some of those in public office are showing signs of failing to take this problem seriously - even at the highest level, where the Belgian Supreme Court, for example, “erred” in a recent judgment which misinterpreted certain essential principles which were believed to have been definitively established. This tendency is also reflected in the fact that the penalties handed down in this context are often much too light to act as a deterrent, even where the texts do provide for adequate penalties, and the amount of the damages awarded to the victims of these acts tends to be very low.

On the other hand there are signs of creativity in some decisions, and this is just what we need if this type of offence is to be stamped out! By way of example, certain judgments are assigning a degree of liability, sometimes reluctantly, to the service intermediaries (especially Internet access providers) involved in the illicit goods traffic. It is not uncommon for the owner of an infringed trademark or copyright to be completely unable to put a stop to such infringements of his rights, unless he can enlist the support of these intermediaries.

W.N.: What advice would you offer Customs services with respect to the best approach they should adopt when confronted with products of this kind?
O. V.: This is a tricky situation given that Customs authorities are not usually empowered to suspend the release of goods, or detain them, simply because they may prove to be in contravention of trade practices law in the broad sense. And where look-alikes are concerned, it is often this area of law which provides the arena for the arguments played out before the courts. However, I hope I have been able to show that in certain circumstances intellectual property law can also provide an effective recourse for preventing these types of products from finding their way onto the market. This is assuming that Customs is informed, on a case-by-case basis, of the intellectual rights that traders believe themselves to hold with regard to their products.

Given the delicate nature of the issues we have been looking at here, the legal debate to which they give rise, and the fact that there is a degree of subjectivity involved, in my view Customs intervention with regard to look-alikes would seem advisable, under Customs law as it now stands, only if it is expressly requested by the person or firm alleging to be the victim and claiming intellectual property rights in the matter, or at least if the latter assumes responsibility for the action taken by the Customs authorities. Following the technical risk analysis performed by Customs services, it is up to that person or firm to carry out a legal risk analysis and shoulder full responsibility for an application for Customs action. Having said that, given the complexity of the problem, a right holder could hardly be blamed for refusing to have look-alikes detained by Customs. Equally, if he decides to proceed and the judgment goes against him, it would be unfair for Customs authorities to reproach him, as a matter of course, for being over-protective in seeking to protect those rights through legal channels. In these circumstances, Customs officers should console themselves by blaming the judge or the lawyer...

More information
www.altius.com

Olivier Vrins is a lawyer in the intellectual property department of the Altius law firm in Brussels (Belgium). He holds a Masters Degree in European Law from the University of Ghent and a Masters Degree in Intellectual Property and Unfair Competition from the University of London. He maintains close contacts with Customs authorities on issues relating to the repression of counterfeiting, and from time to time he assists the WCO with certain legal aspects of this topic. He is a member of several IPR-related international associations, and author and co-editor, with Marius Schneider, of “Enforcement of Intellectual Property Rights Through Border Measures. Law and Practice in the EU” (Oxford University Press).
Asia Pacific turns the spotlight on preferential rules of origin

Public and private sector representatives from 9 countries in the Asia Pacific region met in Malacca (Malaysia) from 9-13 April 2007 to discuss matters relating to rules of origin. The event, which was arranged by the Royal Malaysian Customs administration, was privileged to be opened by the Minister of Finance, Dr. Ng Yen Yen, who underlined the importance that the region attached to better application of preferential rules of origin given the increase in these free trade arrangements and the need for Customs to adapt and enhance its knowledge of origin matters.

Delegates examined developments in the harmonisation of non-preferential rules of origin given the fact that negotiations at the WTO on this issue would enter a crucial phase in the coming months. They also discussed the implications of the harmonisation process on other agreements such as those relating to anti-dumping measures and labelling issues, and the structure and practical application of these rules.

In addition, Australia and Japan provided detailed presentations on how non-preferential rules of origin were prepared and applied in practice which stimulated a great deal of discussion and helped to deepen understanding of these rules. Information was also presented on new developments in the EU’s preferential rules of origin which could have a significant impact on both existing and new preferential arrangements involving the EU. The proposed new EU rules which could have a practical impact on both Customs and the business community include the creation of a register of exporters and the phasing out of certificates of origin.

The conclusions of the seminar would contribute to the ongoing development of a detailed Action Plan on preferential rules of origin which was endorsed at the WCO 2007 Council sessions.

Counterfeiting and drugs: two serious threats that must be curbed!

From 5-8 June 2007, the Baku Regional Training Centre (RTC) in Azerbaijan hosted a Regional Seminar on Combating Counterfeiting and Illicit Drug Trafficking, organised by the WCO Secretariat. This seminar was a follow-up to the International Conference on Combating Counterfeiting and Piracy that was held in Baku from 8-9 February 2007 (see WCO News Issue No. 53).

The Seminar was directed solely at Customs officers called upon to conduct physical inspections of goods at port and airport facilities on a daily basis. The training, which focused on two different topics, was aimed at promoting the WTO TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) and the WCO’s Model Legislation. It also included raising the awareness of ECO (Economic Cooperation Organization) countries about illicit drug traffic trafficking, especially through Operation Tamerlane, the WCO/UNODC Container Control Programme, information exchange via the CEN and Balkan-Info, as well as the work of the Pompidou Group (a multidisciplinary co-operation forum to prevent drug abuse and illicit trafficking in drugs, incorporated into the Council of Europe).

Eighteen Customs officers from Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, and Turkey actively participated in the training session which used practical case studies, role playing, discussions and group work as its basis.

Among the recommendations to come out of this seminar; participants invited the WCO to organise specific actions as well as training sessions on combating counterfeiting and piracy. With regard to the illicit trafficking in drugs, precursors and psychotropic substances, the need to develop and enhance inter-service cooperation, information and intelligence sharing as well as awareness-raising activities among drug enforcement units was highlighted.

At the end of the seminar, participants were treated to a guided tour of Azerbaijan’s National Customs Dog Training Centre.

More information
www.wcoomd.org
The 109th/110th sessions of the Council were characterised by vibrant discussions, influential decisions and a host of nominations, not forgetting the election of a new Director of Tariff and Trade Affairs. Buoyed by this year’s event which also touched on future directions for the WCO and its members, the WCO News editorial team have attempted to provide a summary both in text and in pictures to capture this annual three-day meeting.

Council discussions and decisions

The 109th and 110th sessions of the Council were held at WCO Headquarters in Brussels from 28-30 June 2007. The sessions concentrated on policy issues; elections and nominations; and other business.

Policy issues

The main focus here was on the topics discussed at the 57th session of the Policy Commission that met just before the annual Council sessions. A brief review of each issue is given below:

• Security and facilitation of trade
Various issues relating to the High Level Strategic Group (HLSG) and the SAFE Framework of Standards were discussed, in particular the establishment of a SAFE Working Group to review and update the Framework. This Working Group will be open to all interested WCO Members as well as to the members of the Private Sector Consultative Group (PSCG) and accredited WCO observers. Finally, it was decided that the PSCG would report to the Policy Commission. On the subject of the negotiations at the WTO, the WCO and its Members were invited to continue with their work notwithstanding the stalemate in the negotiations and the uncertain future of the Doha Round. Relations between the WTO and the WCO have improved, and consistency between the WTO proposals and the WCO’s instruments has been maintained. It was considered essential that Customs participate actively, with the Ministries in charge of the negotiations, in determining national positions. Moreover, as facilitation is not a matter for Customs alone, it is important that co-operation with other border services and the private sector is enhanced.

The WCO is participating in needs assessment missions which the WTO is carrying out in a number of countries in order to study the extent to which border procedures are compatible with its proposals. Six of these needs assessment pilot projects have been conducted in collaboration with the World Bank.

The Secretariat was requested to press on with its trade facilitation programme, particularly its efforts to promote implementation of the revised Kyoto Convention (RKC).

The complexity, and also the proliferation, of bilateral and regional trade agreements are causing many difficulties in their application both for Customs administrations and for the private sector. In order to improve the management and application of preferential rules of origin, the Secretariat has drawn up an action plan and proposed a series of measures based on co-operation between Members, sustained contacts with the private sector, the identification of best practices and more effective use of risk analysis.

On the subject of integrated border management, an in-depth analysis of the implications for Customs, with regard to both its own status and its relations with other competent services, is essential. As the concept of integrated border management varies depending on the situation in the country concerned, the solutions adopted will vary too. This means that co-operation between the competent authorities, and between those authorities and the private sector, is of vital importance if the system is to be coherent, pertinent and efficient. Further work will be done on this issue in the relevant Committees and by the Secretariat, and the ideas which emerge will be taken up as part of the discussions on Customs in the 21st Century.

• Capacity building
The WCO’s activities in this field are much appreciated, as are the contributions and efforts of the donor and beneficiary countries. The objective now is to ensure the success of Phase II of the Columbus Programme, particularly in terms of having Customs administrations take ownership of the project and espouse its objectives.

• Customs in the 21st Century
This subject prompted lengthy exchange of views, some aspects of which will be taken up in the document to be presented at the June 2008 Council sessions. A high level strategy defining the mission and responsibilities of Customs in the 21st Century was drawn up. This is the subject of a Resolution adopted by the Members of the Council. The Council sessions included a panel discussion on this theme and the discussions on this topic are described elsewhere in this edition (see page 50). It was agreed that a Forum on this subject entitled “Inventing Our Future” will be held in Brussels from 14-15 February 2008.
Combating counterfeiting and piracy
The proposed SECURE (Standards Employed by Customs for Uniform Rights Enforcement) framework was examined. This instrument brings together, in a structured format, a series of measures, recommendations and best practices aimed at offering a pragmatic response to the problems posed by counterfeiting and piracy. There is nothing mandatory or binding about this framework, which is simply intended to provide a working basis for Customs administrations wishing to build sustainable capacity in this area. The framework is intended to be practical, functional and progressive. A SECURE Working Group has been set up to deal with all IPR issues. It will hold its 1st Meeting in Brussels from 18-19 October 2007, and will report to the Policy Commission.

Harmonized System matters
The High Level Ad Hoc Group, which has now completed the tasks assigned to it, proposed in its conclusions that an advance tariff ruling system (ATRS) be set up at the WCO. The system will deal solely with the importation of goods and the WCO will provide advice only to Customs administrations, on the basis of an agreement signed between the parties. A pilot project will be launched with a limited number of administrations which do not already have an ATRS. The main objective being that at the end of a 5-year period, each participating administration will have its own ATRS operating at national level. The results of the pilot project will be examined in December 2008.

Membership request by the European Communities
The European Communities put forward a request for membership of the WCO in 2001. This question, which was left in suspense pending the emergence of a political solution, was reopened in June 2006 on the basis of a report setting out a possible way forward. The process proposed, which was accepted by the Council, involves two stages. Firstly, the Convention establishing a Customs Co-operation Council (CCC) will have to be amended to allow Customs and Economic Unions to join the WCO. The Council duly adopted a Recommendation for that purpose. The amendments to the Convention will not take effect until all the existing Contracting Parties have notified the Belgian Ministry of Foreign Affairs of their acceptance of the amendments. Secondly, pending the entry into force of the amendments made to the CCC Convention – a process which could take a number of years – the Council adopted a Decision under which the European Communities, as a provisional measure, will have rights akin to those of a WCO Member for matters falling within its competence.

Strategic Plan
The Strategic Plan for the three-year period commencing 2007/2008 to 2009/2010 includes a Vision Statement, a Mission Statement and a Values Statement that generate Key Result Areas. The latter are regularly checked and modified to reflect the Customs environment. The Plan is broken down into Programmes, Projects and Actions, each of which has a specified Deliverable and a Due Date. The Council adopted the Strategic Plan and the Programme-by-Programme breakdown. These are available on the WCO Members’ web site.

Elections and nominations
Secretariat
From among several candidates vying for the post of Director, Tariff and Trade Affairs, within the WCO Secretariat, delegates selected Mr. Antoine Manga Massina, the current Director General of Customs in Cameroon (see article on page 54).

Other
The other outcomes are displayed in a summary table (see page 51).

Other business
WCO Trophy
The award of the 2007 WCO Trophy for Combating Counterfeiting and Piracy, the Yolanda Benitez Trophy, is the subject of a separate article (see page 55).

58th Session of the Policy Commission
The Council accepted an invitation from the delegate of Kazakhstan to host the 58th Session of the Policy Commission, which will take place in Almaty from 6 - 8 December 2007.
Food for thought
...Customs in the 21st century

What should we be doing to ensure that Customs is well-placed to effectively meet the challenges of the 21st century? What are the main trends? What will our environment look like? What should we be doing? Has our role changed, merely expanded, or are we just doing things differently? Should we be considering a new operating model? And, what about the way we look at borders, is that changing too?

These questions and more are being asked by Customs as it sets itself on track to tackle the challenges of the 21st century environment with an avant-garde approach.

Council 2007 saw Directors General of Customs beginning in earnest to prepare for the future as they debated these issues during a panel session dedicated to Customs in the 21st century. Presentations by three academics and the Comptroller of New Zealand Customs helped to inform the debate and generated a wealth of additional ideas that had to be taken into account in determining the future Customs environment.

Clearly, to meet the demands that will be faced in the coming years and to ensure acceptable levels of effectiveness and efficiency, Customs will have to adapt, improve cooperation, and increase its inter-connectedness if it is to cope with the pace of change and manage the opportunities and threats that lay ahead. Inter-connectivity among Customs and its stakeholders is vital. Understanding the global risk landscape too is imperative, as Customs is at the frontier of globalisation whilst operating under increasingly broad public scrutiny.

According to recent research, Customs in the 21st century will be characterised by a number of key activities, working methods and concepts. These will include: managing international supply chains; controlling increased flows of people and goods; applying knowledge and risk management; advance processing of information; using systems-based approaches; targeted searches using risk analysis; a high degree of automation and transparency; and a high level of integrity. Additionally, using a “single window” system, applying quality standards and controls, implementing the authorised economic operator concept and mutual recognition programmes, trade facilitation, increased public-private partnerships, integrated or unified border management, greater flexibility and agility, and the maintenance of common standards, systems and procedures form part of this package.

Discussions during Council 2007 led to a number of additional ideas being identified as pertinent and which would need to be included in any assessment of Customs in the 21st century. These include, amongst others, the role Customs should play with respect to environmental issues, the creation of a more professional organisation, an enhanced human resource base, a more customer-focused approach, a broader view on global capacity building, initiatives to strengthen leadership, world technological developments, and the conceptualisation of a possible new Customs operating model.

To enable a credible scenario of Customs in the 21st century to be prepared, the Council tasked a drafting group to do just that. The information provided by academic researchers and the views expressed by Directors General of Customs will form part of a basket of reference information that the group will use as they set about their task. Additional research and studies, such as that relating to Customs risk management, will run in tandem to further the work of the drafting group. The final results of this exercise in future-proofing Customs will assist both the WCO and Customs administrations worldwide as it will enhance the ability of Directors General of Customs to provide more effective leadership in their individual environments and help to position the WCO as a strategic organisation that can respond with confidence in the future.
## 2007/2008 Elections - Council Working Bodies and the Secretariat

### Council

**Policy Commission**

*Members*: Council Chairperson, Vice-Chairpersons.


- **Chairperson**: T. ERLING (Finland)
- **Vice-Chairpersons**: A. JOLICOEUR (Canada)
- **VC**: S. K. SHINGAL (India)
- **VC**: J. FEEHILY (Ireland)
- **VC**: M. W. AL-ZABEN (Jordan)
- **VC**: D. TIVANE (Mozambique)
- **VC**: A. NANGA (Senegal)

### Finance Committee


- **Chairperson**: P. NDONG NGUEMA (Gabon)
- **VC**: T. SCHOENECK (Germany)

### Audit Committee

*Members*: **Belgium**, **Canada**, **Ghana**, **Lesotho**, **Malaysia**, **Morocco**

- **Chairperson**: A. JOLICOEUR (Canada)

### Permanent Technical Committee

- **Chairperson**: M. WICKTOR (Sweden)
- **VC**: C. BUYONGE (Kenya)

### Information Management Sub-Committee

- **Chairperson**: A. SAHU (India)
- **VC**: V. O’HORO (United Kingdom)

### Enforcement Committee

- **Chairperson**: H. FRÖHLICH (Germany)
- **VC**: P. CAMPBELL (New Zealand)

### Technical Committee on Rules of Origin

- **Chairperson**: L. GHRAIRI (Morocco)
- **VC**: A. NACRO (Burkina Faso)

### Technical Committee on Customs Valuation

- **Chairperson**: I. CREMER (United Kingdom)
- **VC**: M. BANNON (Australia)

### Harmonized System Committee

- **Chairperson**: P. JOFFRE (France)
- **VC**: H. KAIDA (Japan)
- **Y. NOVIS (Brazil)**
- **WP Ch**: Y. NOVIS (Brazil)

### HS Review Sub-Committee

- **Chairperson**: S. SANGARE (Côte d’Ivoire)
- **VC**: P. KRAUER (Switzerland)

### Scientific Sub-Committee

- **Chairperson**: I.S. REESE (United States)
- **VC**: F.M. SIEBERTH (Austria)

### Secretariat - Tariff and Trade Affairs Directorate

- **Director**: A. MANGA MASSINA (Cameroon)

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**Key**: Ch : Chairperson, VC : Vice-Chairperson, WP Ch : Working Party Chairperson
Newcomers at the helm

Three new regional WCO Vice-Chairs were nominated by their peers during the 2007 sessions of the Council: Ms Josephine Feehily, the Commissioner in the Office of the Revenue Commissioners in Ireland, for Europe; Mr. Armand Nanga, the Director General of Customs in Senegal, for West and Central Africa and Mr. Domingos Tivane, the Director General of Customs in Mozambique, for East and Southern Africa.

Each one shares some thoughts on the priorities and goals that will guide them during their term of office.

WCO Europe Region

Firstly, on behalf of the Irish administration, I would like to thank the Members of the Europe region for their confidence by allowing Ireland the opportunity to serve as Vice Chair for the WCO Europe region. We will be honoured to serve the region for the duration of our assignment.

During its term of office, Ireland will be conscious of the many challenges faced by Customs in adapting to the changes that are taking place in our environment, and of the particular pressures arising from the accelerating pace of change. In this context, the Irish administration will make every effort to successfully represent the region and its interests for the next year.

Of particular mention here is the work already under way in connection with the methodology used in the Europe region for representation on the Policy Commission. Ireland will take this work forward as much as possible. In addition, Ireland will also hope to carry on and build upon the work already done by Hungary over the past two years and in this respect, I wish to pay tribute to our colleague Dr. Janos Nagy, the Director General of the Hungarian Customs administration, for the excellent job he did in his capacity as Regional Vice Chair.

Josephine Feehily
Commissioner
Director-General of Irish Customs
Vice-Chair of Europe Region

More information
www.revenue.ie
Senegal was elected WCO Vice-Chairperson for the West and Central Africa Region at the 109th/110th Council Sessions in June 2007. On behalf of our national leadership, who have welcomed this as a great honour for our country, I take this opportunity to reiterate my thanks to all my fellow Directors General of Customs from the various countries which make up our region. As we embark upon Senegal’s term of office as Vice-Chair, I would like to take you through our country’s perception of the way forward for our region, by outlining our concerns and our priorities.

In essence, we feel that urgent action is required in the following areas:

1. Promote the concerns and assets of the region to the WCO, and ensure that the region’s voice is heard more clearly;
2. Designate “focal points” within each Customs administration in our region, as a means of synergizing our actions and ensuring that activities are monitored regularly with the team set up in Dakar for this purpose;
3. Establish more rapid information channels between the heads of the region’s Customs administrations, so that regular exchanges of information can take place;
4. Draw up a communications strategy to promote a positive image of Customs and secure wholesale popular support for the measures and activities undertaken by the Customs administrations of the region;
5. Strengthen the means of action of the two Regional Intelligence Liaison Offices (RILOs), to provide a firm foundation for a concerted campaign against the abuses which plague our region;
6. Promote Customs mutual administrative assistance more effectively, through the conclusion of bilateral agreements on this topic between the various Customs administrations of the region;
7. Forge contacts and maintain regular relations with the Vice-Chairs at the head of the other WCO regions, with a view to harmonising legislation, Customs procedures and, where appropriate, stances on different issues;
8. Progress the major WCO projects which are relevant to our region, including in particular the implementation of the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, with the support of the Columbus Programme with the objective to identify priority action programmes and commence with their implementation as a matter of urgency;
9. Step up the fight against counterfeiting and piracy – among the most devastating problems of this century – by harmonising and co-ordinating initiatives at regional level using WCO initiatives, in particular the SECURE Programme, as the basis for this campaign;
10. Implement efficiently, throughout the region, the tools and instruments developed by the WCO, such as the 2007 version of the Harmonized System, the Agreement on Customs Valuation, the revised Kyoto Convention, the WCO Customs Data Model, etc;
11. Speed up the project to set up a Regional Office for Capacity Building Office (ROCB) in Abidjan (Côte d’Ivoire);
12. Develop the Customs-private sector partnership as part of the implementation of the SAFE Framework and, more specifically, of the revised Kyoto Convention.

All these projects will be discussed at the annual meeting of the heads of the region’s Customs administrations. There will be an evaluation of this meeting, which could be held in Dakar quite soon, and I hope that we will all be fully satisfied with the outcomes.

Armand Jean-Jacques Nanga
Director General
Senegal Customs
Vice-Chair for the West and Central Africa Region

More information
www.douanes.sn
WCO East and Southern Africa Region

In accepting the honour as Vice Chair for the WCO East and Southern Africa (ESA) region, bestowed on me by delegates of the Governing Council which met in Maputo during May 2007, I am deeply conscious of the responsibilities entrusted to me.

The WCO ESA region is a dynamic one and has made significant progress in many areas over the past two years, thanks to the excellent leadership of the former Vice Chair, Eugène Torero (Rwanda).

In my role as Vice Chair, I will work tirelessly to promote the ESA region and provide the vision, leadership and motivation necessary to meet the numerous challenges facing us.

If we are to be successful in carrying out the mandate of our respective Governments and the mission and roles of the WCO, then I believe that our emphasis must be on a process of continuous capacity building of our organisations. In this respect we are most fortunate to have our own Capacity Building Centre and I will give the Centre my full support and actively encourage participation in its programmes and the fulfilment of its strategic plan.

In most of the Customs administrations within our region the revenue we collect is a significant component of our Government’s budget and one of the challenges we all face is to improve these revenue collections in a climate characterised by reducing duty rates.

I am also very conscious that while we are looking at new ways of increasing our revenue we must be mindful of the imperative to improve trade facilitation, implement the Framework of Standards, better enforce intellectual property rights, and recognise health and safety issues, as well as the overall protection of our respective societies. These are the challenges that our region faces and as its Vice Chair I commit myself to meeting them.

I realise that if we are to be successful we must focus upon the capacity of our administrations. It is therefore essential that we have trained and motivated staff, appropriate infrastructure, reliable integrated communications and IT systems and apply modern work methods such as risk management and compliance and control models. Overlaying everything must be a sustained and effective commitment to combating corruption.

I know that member administrations can not achieve these programmes or meet these challenges in isolation. However, it is possible though our regional structures and our own Capacity Building Centre and of course with the support of the WCO and donors to make real progress. As Vice Chair I will do everything within my power to make this happen.

Domingos TIVANE
Director General
Mozambique Revenue Authority
Vice Chair for the WCO East and Southern Africa Region

Back at the WCO!

On 30 June 2007, the Directors General of the WCO’s Member Customs administrations elected Mr. Antoine Manga Massina, Director General of Cameroon Customs, to the post of Director, Tariff and Trade Affairs during the 2007 annual Council sessions.

Mr. Manga Massina will take over from Chriticles Mwansa, who was recalled by the President of the Republic of Zambia to take up a senior government post. Antoine will commence his duties with effect from 1 January 2008 within an organisation with which he is extremely familiar, having been the Deputy Director responsible for Valuation from January 1992 until July 1999 under Mr. Holm Kappler (United States).

More information
www.wcoomd.org
During its 2007 Council Sessions the WCO awarded its 2007 Anti-Counterfeiting and Piracy Trophy for the second time. This year’s winner was the German Customs Administration that distinguished itself by impressive seizure results, by its active co-operation with the private sector, and for taking the initiative within the framework of Germany’s G8 Presidency to set up a nominal database dedicated to IPR using the WCO CEN and CEN COMM tools as a platform.

Four other countries were also honoured:
- Second prize went to Togo notably for an exceptional seizure of counterfeit cigarettes.
- Third prize went to Malta for excellent results in using risk analysis for transit and transhipment operations.
- A special prize went to Algeria for developing a close partnership with the private sector and for implementing new IPR legislation.

- A special prize also went to China for its export controls, for reporting seizures for capture into the WCO CEN database, and for the increase in the number of seizures realised and the quantity of items intercepted.

The WCO dedicated the trophy to the late Mrs. Yolanda Benitez, a Customs Manager at the Customs terminal in Ciudad del Este in Paraguay, who was murdered by notorious traffickers for having stopped the illegal importation of several containers of CD-ROMS.

Congratulations to all the winners.

More information
www.wcomd.org
The WCO Deputy Secretary General, Kunio Mikuriya, welcomed Dato’ Dr. Ng Yen Yen, the Deputy Minister of Finance in Malaysia, who paid a visit to WCO headquarters in the company of Dato’ Sri Abd. Rahman, the Director General of Royal Malaysian Customs, and Mr. Harun Yacob, a Customs Director. After a brief introduction to the WCO and its activities, the Minister and her delegation were given presentations covering the WCO IPR initiatives, the WCO Framework of Standards and the WCO Columbus Programme. The Minister expressed her deep appreciation for the work being carried out by the Secretariat, particularly the efforts of the international Customs community to fight counterfeiting and piracy across the globe. Customs officials from the local Royal Malaysian Embassy, Mr. Nik Adee and Ms Asha Menon assisted the high level delegation during their visit to the WCO.

More information
customsmy@skynet.be

The WCO and the World Free Zone Convention join forces

The WFZC - World Free Zone Convention - hosted an international conference in Brussels from 5-6 June 2007 with the support of the WCO. The event focused on a number of pertinent issues related to economic zones around the world and their impact on world trade. Among other things, discussions included; taxation initiatives and their affect on trans-national corporations; the use of tax incentives to create clusters and financial zones; the use of transfer pricing and double taxation treaties; tax treatment of public/private joint ventures; international trade facilitation initiatives; WCO standards; the establishment and monitoring of Customs bases in public/private zones; the importance of co-operation between Customs administrations and free zone authorities and their respective responsibilities; ICT issues between trading blocs and future prospects in this regard; supply chain integrity issues; and a review of the impact of the proliferation of zones for Customs authorities.

These special economic zones are also known as free zones, science parks, enterprise zones, and industrial development zones. Information exchanged during the event will impact positively on future discussions with respect to economic development zones.

More information
www.freezones.org
info@freezones.org

Malaysian Deputy Minister visits the WCO Secretariat

The WCO Deputy Secretary General, Kunio Mikuriya, welcomed Dato’ Dr. Ng Yen Yen, the Deputy Minister of Finance in Malaysia, who paid a visit to WCO headquarters in the company of Dato’ Sri Abd. Rahman, the Director General of Royal Malaysian Customs, and Mr. Harun Yacob, a Customs Director.

The Secretariat were honoured to receive the Minister and pleased to note her enthusiastic support for its work and initiatives.

More information
customsmy@skynet.be
With the aim of maximising the potential and performance of customs and the private sector, the World Customs Centre of Learning offers a wide range of training sessions right through the year using a variety of quality training methods:

- **E-learning**: online courses in the form of interactive multimedia training modules
- **Face-to-face learning**: expert onsite training led by leading customs specialists
- **Blended learning**: online e-learning courses combined with face-to-face training
- **Customised learning**: training packages tailor-made to business requirements

### Training calendar 2007/2008

<table>
<thead>
<tr>
<th>Event</th>
<th>Dates</th>
<th>Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harmonized System for High-Tech Products</td>
<td>23-24 October 2007 (+ e-learning material)</td>
<td>Become au fait with the major changes in HS 2007 and their consequential effects on the classification of high-tech products.</td>
</tr>
<tr>
<td>Customs Valuation and Transfer pricing</td>
<td>13-14 November 2007 (+ e-learning material)</td>
<td>Increase your understanding of the Customs value and the transfer pricing that impact your business.</td>
</tr>
<tr>
<td>Combating counterfeiting and piracy</td>
<td>4-6 December 2007 (+ e-learning material)</td>
<td>Explore ways in which right-holders can constructively cooperate with Customs in the fight to combat counterfeiting and piracy.</td>
</tr>
</tbody>
</table>

**2008 (foreseen)**

- **February**
  - 12 - 13 Harmonized System General Interpretative Rules
- **March**
  - 18 - 19 WCO Data Model
- **April**
  - SAFE Framework of Standards
  - Customs Valuation and Transfer pricing
- **May**
  - Rules of Origin
- **June**
  - 3 - 4 Harmonized System 2007 for Chemical Products
  - 10 - 12 Combating counterfeiting and piracy

**Places are limited. Book NOW to avoid disappointment!**

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Conference organised in conjunction with

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WCO Headquarters
Brussels, Belgium

Date
11-12 December 2007

Conference co-chaired by
- Professor David Widdowson, University of Canberra
- Professor Hans-Michael Wolffgang, University of Münster
- Michael Schmitz, World Customs Organization

For further information about the Conference:
http://events.wcoomd.org