

Case Studies on Specific Items

(1) Case study on competent authorities

Application	Decision for suspension	Suspension	Determination
Customs	Customs	Customs	Customs
Customs	Customs	Customs	Court
IP Office	IP Office	Customs	Court
Quasi-judicial organization	Quasi-judicial organization	Customs	Court
Court	Court	Customs	Court

Note: A country may have two or more systems for border procedures.

(2) Case study on application types

	<i>“Specific”</i> application	<i>“General”</i> application
Submission timing	When to know that the allegedly infringing goods are about to be imported, or have been imported but not released	When to consider that the infringing goods are likely infringed
Expected Customs action	Immediate action	Preventive action
Information on suspected goods in the application	Need to provide	Optional
Validity period	Short period	1 year or more

(note) A general application can be used for an immediate Customs intervention, if the information is specific enough to identify the consignment.

(3) Case study on Customs suspension

- Customs suspension based on:
 - ✓ *Application;*
 - ✓ *Customs' own imitative under application;*
 - ✓ *Order of IP office, court, or quasi-judicial organization; or*
 - ✓ *Customs' own initiative (without application or order).*
- A variety of simplified procedures for release, destruction, etc. of the goods without determining whether IP rights are infringed; and
- Different simplified procedures depending on the basis of Customs suspension.

(4) Case study on fees and securities

	Fee	Security
Who?	Right holder	Right holder
When?	At application	At or after suspension
How much?	Fixed amount per application	In a variety of amounts, for example: <ul style="list-style-type: none"> •Set by Customs or court; •Fixed amount; or •25%, 100%, 110%, etc. of the value of goods.
Purposes	Administrative costs incurred in the application process	Used to prevent abuse*, and for a variety of purposes, for example: <ul style="list-style-type: none"> •To cover indemnification of the importers compensation for any injury caused to them through the wrongful detention (Article 56 of TRIPS Agreement); •To cover the expenses incurred during the suspension (e.g. warehousing)**; and/or •To cover the costs of remedies** (e.g. disposal of the goods incurred after detained by Customs).

* In accordance with Article 53 of the TRIPS Agreement.

** Without furnishing any security, the right holder may be required to consent to bear the costs during the suspension and/or remedies at application or suspension in several cases.

(5) Case study on simplified procedures during the Customs suspension

5.1 Customs suspension based on application

Action	Conditions for the simplified procedures
Release	<ul style="list-style-type: none">• If the right holder fails to initiate legal proceedings to court within 10 working days from the notification of Customs suspension;• If Customs has not received any notification of the court for assistance in execution of an order within 20 working days from Customs detention;• If the right holder fails to lodge an application with necessary security to Customs with 3 working days from the notification of Customs suspension;• If the importer obtains a written agreement of the right holder to release the goods before the right holder initiates legal proceedings to court.
Destruction	<ul style="list-style-type: none">• if the importer consents to voluntarily forfeit the goods before the right holder initiates legal proceedings to court;• If the right holder provide Customs with the written agreement of the importer to abandon the goods for destruction within 10 working days from the notification of Customs suspension;• If the importer does not oppose destruction of the goods within 10 working days from the notification of Customs seizure.

5.2 Customs suspension on its own initiative

Action	Conditions pour les procédures simplifiées
Release	<ul style="list-style-type: none">• If the right holder fails to lodge an application to Customs within 3 working days of the notification of Customs suspension, and fails to initiate legal proceedings to court within 10 working days from the notification of Customs suspension;• If the right holder fails to give notice (i.e. application) with necessary bond to Customs within 5 days from Customs suspension, and does not join the proceedings leading to a decision on the merits of the case within 10 working days from Customs suspension of clearance.