



QUESTIONS & ANSWERS



IPI Enforcement Seminar for Law Enforcement Agencies of CARIFORUM Countries

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Zoom



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Questions and Answers

1. From an EU perspective, what are the main constraints the customs administrations are faced with in relation to cooperation with rights holders?

There are mainly two constraints:

- 1) The rights holders need to provide detailed information for risk analysis for customs and they must commit to keeping that information updated. This is essential for customs to evaluate each case and to decide to take action.
- 2) Reluctance from rights holders to intervene, reply or take action when either the amount or the value of detained goods is low. In those cases customs officials must release the goods, despite them being potentially fake.

In general, action depends on the decision of the rights holders.

Additionally, a limited number of rights holders are willing to intervene and take action against counterfeiters.

2. *What is the role of the prosecution when there is a customs action?*

The role of the judiciary is dependent on the single national legislation. The role of the prosecutors depends on the national system. The prosecutors can receive the case directly from law enforcement authorities or the rights holder. When the national criminal law establishes that, there is an obligation from customs authorities to bring the case to the prosecutors, this is for example the case for Italy. But this obligation depends on the existence of such criminal law provisions.

3. Do Alert and Seizures information in the Customs Enforcement Network Communication Platform (CENcomm) include nominal or sensitive data for risk analysis, namely consignor and consignee, but also number of containers?

In the system you have all the information regarding routing, consigners, but sometimes countries can decide not to share all the information/details regarding the decision. But there are mandatory data or information e.g. container number, packaging, quantities. Most times all the information is received from members.

4. Relates to system of communication and information sharing to rights holders. Issue relating to a product in Barbados that led to a trial. There was a need to contact the owner of the trademark. What structures are in place, if any, as it relates to the specific rights holders needing to have a requirement of making themselves available to be contacted?

The customs have to be put in a position to know as much as possible about a right and the rights holder, including owner of the right. As far as the ownership of the trademark, it is an information provided in the application for action. In the EU it is harmonized. In addition, EUIPO manages [TMview](#) and [Designview](#) which are open platforms providing registration information of trademarks and designs from IP registries of the EU and from national registries of the member states and many third countries. The systems are open and everyone can access these platforms to see at least the registration information on trademarks and contact information for owners of trademarks and representatives of the companies.

5. There is a bit of difficulty in the sharing of information in the Caribbean, however, is it mandatory that officers are vetted before sharing information?

Before setting up the group, a letter is sent to members to nominate two contact persons in charge of IPR matters or working in enforcement. These nominees are the only channels through which information can be shared. Only the contact persons nominated can share the information. WCO cannot receive information from other persons in the same country in that specific group. In addition, the Regional Intelligence Office (RILO) can share information in the CENcomm.

6. When initiating enforcement actions on IP infringement by customs, what factors should be considered in determining the quantum of bond that is required for such actions? When customs wants to initiate actions in terms of stopping counterfeited goods on the border, what are the different factors or criteria to be considered in determining the quantum of the bond?

Vessels need to be checked for the manifest, origin, and counterfeit good. The main source of counterfeit good is Asia. A lot of goods arrive by air and packages. Information systems in countries need to be improved. Based on risk management, there is a need to determine which vessels to check when it is difficult to check each shipment and good. Slogan for risk management is "less control, better control". It is critical to have more information and more intelligence through sharing information with other countries. Small parcels are the main challenges for customs administration.

7. Does the CENcomm issue any warnings or also provide the destination for the shipment?

Some countries' customs don't have the authority to stop goods in transit or goods in some other customs regime. As part of the CENcomm group, if a country cannot stop goods or a good has sensitive issues, it is possible for a country to contact another country directly via CENcomm (provided both countries are in the system). The second country that wants to share information needs to be in the group and share how they want to deal with the good/shipment.

8. From the National Office, how do you encourage rights holders as they may not wish to pay fees associated with storage costs for counterfeit?

There is no such fee established for customs intervention in the EU. The EU regulation on customs enforcement only establishes the commitment of the right holder to bear any cost related to activities related to the suspension of the release of the goods. For example, in relation to the storage and destruction of the goods. The right holder must sign to this obligation; this is the only contribution asked by customs to the rights holder. Some different provisions may apply at national level.

9. Would it be possible to have a separate database for the region to share information between the rights holders and law enforcement?

The [EUIPO IP enforcement portal](#) is a tool free for member states, customs and police authorities and right holders to exchange information, also providing the opportunity to send in the application for action electronically. This is a successful tool which can be implemented somewhere else. Opening the portal to third countries is one of the future developments of the IPEP. Regional experiences of databases to share information must be encouraged.

From a WCO perspective, it is very important for countries in the same region to share information, as you may face similar problems. It is important to have cooperation regarding enforcement methods and practices.

10. Is there any binding agreement between Customs and the Right Holder, just in the event there should be legal actions taken in relation to seizures?

The right holders make a specific request to customs called "Application for Action (AFA)" to protect that particular right. Once the request is submitted, right holders have an obligation to make themselves available to be contacted and cooperate.

It is very important to have an agreement between customs and right holder because this agreement will allow customs to have a sound background to take action. Ex-officio gives power to customs to take action without any request from right holder. It is the best practice members are encouraged to adopt (if the national legislation confers such power to Customs).

11. Can customs on its own go ahead and seize infringing goods and then contact the owner?

That depends on the legal framework in your country.

12. If customs go ahead and do an intervention of infringing goods and then contact the right holder and the right holder is reluctant, can we still go ahead and destroy it, knowing that the good is infringing, irrespective of the intervention of the right holder because of the TRIPS Agreement provision or are the goods just released thereafter?

Depending on the legislation in the particular country, the good practice is to proceed without any right holder intervention. In the case of public health matters customs can go ahead and seize and destroy, especially as it relates to medicines which can have an impact on human health, with the health authority authorization, customs can go ahead and destroy the goods.

The principle is to base the action on the request of the right holder. The TRIPS Agreement establishes the principle of an ex officio intervention, but this is implemented based on national legislation. It is definitely a question of the country's legislation.

In the EU the ex-officio procedure is allowed but even in this case an application for action is requested before suspension of the goods.

13. Risk management systems, regional and international. Can you give more information on the ease of accessibility for small nations to access this information?

In ASYCUDA you already have a risk management system but regarding IP issues there are not a lot of risk indicators in ASYCUDA or other systems. That is why you need to work to put IP information into the system. It is important to work on improving the national risk management systems.

Sharing information with other countries is largely a policy issue. An agreement for sharing information is especially important. WCO IPR CENcomm group shares information. It is a good avenue to share information among countries for without this, and in the absence of a specific agreement among countries, this information cannot be shared.

14. In the beginning of the session we got some statistics in relation to the cost of infringements globally (USD 500+ billion) what percentage of that comes from the Caribbean and Central American region but more specifically the Caribbean Region?

An OECD study was conducted but no specific information on a particular region. Conversely, the data is divided by country. There is a classification of the top 25 countries with the propensity to export counterfeit goods. Very few countries from the region are in that top 25. Perhaps this is something that can be taken up by the CarIPI project to get specific information about the region.

The figure would depend on reporting. With no IPR infringement/seizures made by customs or other agency then this would not be reflected regionally.

15. What are some examples of risk indicators relating to IPR that should be included in the system?

- The routes, HS number, etc.
- Country of origin as well

16. Comment: it would be helpful to know from the relevant agencies about the cost of infringement from the Caribbean.

17. Other/contacts:

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EUIPO Massimo Antonelli: Massimo.antonelli@sne.euipo.europa.eu

Interpol Kirstine Pedersen: k.pedersen@interpol.int

Interpol: <https://iipic.org/> to learn more about INTERPOL's online IP crime capacity building tool for law enforcement.

18. Useful information:

- About the CarIPI Project: www.CarIPI-hub.org
- EUIPO Observatory: <https://euipo.europa.eu/ohimportal/en/european-observatory>
- <https://www.interpol.int/Crimes/Illicit-goods/Illicit-goods-the-issues>
- <https://www.interpol.int/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19>
- [OECD-EUIPO Trends in Trade in Counterfeited and Pirated Goods \(2019\)](#)