

React

Draft Toolkit:

enforcement of IP rights in transition countries

Objective of document is to identify practical issues and show several approaches and suggestions

It compiles information in country and working group reports presented at the 2010 WIPO interregional meetings as well as private sector views mainly expressed by REACT

Focus is on

BORDER PROTECTION

MARKET SURVEILLANCE

BORDER Enforcement

BORDER ENFORCEMENT

Issues:

- application for protection
- goods identification
- follow up procedure
- storage, disposal and destruction of fake goods
- transit

Application Procedure

Low number of customs applications

- a. information on procedures available under national law
- b application costs: fee, translation, or notarization of POA
- c. formalities: like submission of original TM certificates, redundant, burdensome and lengthy (only in case of doubt)
- d. Bond or insurance: Indemnity letter to be preferred
- e suggestion of single application for several countries
- f. filing of application electronically: available in several EU member states

Goods Identification

- a. Inspection: digital images exchange to be preferred
- b. Access to information: better to exchange data on consignment quickly in order to avoid abuse and damage!
(reasons to restrict: protection of confidential information;
preventing of stopping grey imported goods)
- c. Product info on line database
Example is WCO tool Interface Public-Members
- d. Capacity building concerning identification
sharing of knowledge in training programs

Follow Up Procedure

a Legal costs

According to TRIPS recovery of expenses should be possible: 14 EU enforcement directive; good practice “costs shall be paid by declarant in cases where the goods prove to be counterfeit
“

b. simplified procedure

good solution to minimize costs: art 11 EU regulation. Either written agreement or presumption> not in all countries option of presumption has been introduced.

c. Duration of proceedings

criminal procedures tend to be lengthy. High storage costs; simplified procedure therefore to be preferred.

d. capacity building follow up procedure:

further training for judiciary required

Destruction and Recycling

WIPO study: destruction and recycling is becoming an issue; technically complex, costly and onerous particularly in view of environmental impact

a. costs of transportation, storage and destruction

Rights holders find it unfair to bear costs. Look for other options to impose costs on infringer; keep goods in bonded warehouses declarants

b. Environmental issues

watch out for strict provisions which complicate efficient and effective recycling procedures

Enhanced regional cooperation required to accomplish this.

Other issues

Ex officio procedure:

Optional in TRIPS; included in EU Regulations; More elaborated in ACTA

Transit:

Difficult to decide on regime

Recommend to follow Max Planck Institute suggestion: clearly identified counterfeit products should be stopped anywhere

MARKET SURVEILLANCE

Market surveillance is important to protect consumers against the dangers of fake products

UNECE Recommendation M is particularly helpful

Use of Market Surveillance as a Complementary Means to Protect Consumers and Users against Counterfeit Goods

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Agencies involved

Bureau of Standards

Market inspectors

Police

Consumer Protection Bodies

Customs authorities

Market Inspectors

Well equipped and very suitable for this task. Already in many countries available

Not always clearly defined powers with regard to counterfeited goods

Police

Often priority on major cases and not as much market operations. Still wide powers available and can be very effective

International cooperation is starting slowly

Customs authorities

In some countries, next to competence at the border, customs officers also have powers to intervene locally

Advantage is the link with border trade and information sharing.

Cooperation

Enhanced Interagency cooperation

In case of overlapping responsibilities, better to seek coordination and consultation to improve cooperation

Strategic Interaction with Rights Owner/Capacity building

Recommendation to build on experience within customs

Equally recommendable to seek cooperation mode with rights owners to enhance resources available (intelligence sharing, training, storage/destruction ...)