

Advisory Committee on Enforcement

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COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT AT THE NATIONAL AND REGIONAL LEVEL

Contributions prepared by Armenia, Chile, China, Japan, Namibia, the Philippines, Thailand, Turkey and Viet Nam

1. At the tenth session of the Advisory Committee on Enforcement (ACE), the Committee agreed to consider among other topics the “exchange of information on national experiences relating to institutional arrangements concerning intellectual property (IP) enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner”. During the eleventh session of the ACE, eight Member States (Canada, Georgia, India, Italy, Pakistan, Portugal, the United Arab Emirates and the United States of America) reported on their experiences with coordinating IP enforcement at the national level¹.
2. This document contains the contributions of nine Member States (Armenia, Chile, China, Japan, Namibia, the Philippines, Thailand, Turkey and Viet Nam), addressing the specific theme of coordinating IP enforcement at the national and regional level. The contributions underscore the need for close collaboration between governmental agencies tasked with the enforcement of IP, as well as cooperation with right holders and additional stakeholders. Contributing Member States outline initiatives ranging from efforts to approximate national legislation to international standards; establish an institutional body dedicated to coordination; undertake awareness-raising activities targeting enforcement authorities and the general public; facilitate the exchange of technical expertise; and implement goal-oriented strategic plans incorporating elements of inter-agency and stakeholder cooperation.

¹ *Coordinating Intellectual Property Enforcement at the National Level* (WIPO/ACE/11/8), available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=342696.

4. The contributions prepared by the Member States are in the following order:

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[Contributions follow]

ARMENIA'S EXPERIENCE WITH COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT

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ABSTRACT

Armenia has focused on the approximation of its national legislation to international standards, taking initial steps towards the implementation of intellectual property right (IPR) enforcement in line with international and European Union (EU) standards, and conducting IPR awareness-raising activities.

The above-mentioned activities were realized within the framework of the National Strategy on IPR Protection and the Twinning Project on Strengthening the Enforcement of IPRs in the Republic of Armenia. The main objective of the reform to Armenia's IPR system is the development of the economy and creativity within Armenia as well as the enhancement of Armenia's competitiveness in the global economy.

The Armenian Intellectual Property Agency (AIPA) plays an important role in the coordination of all the institutions responsible for the enforcement of IPR legislation. One of its main objectives is to raise awareness among enforcement authorities and the general public of the implications of trademark and copyright infringement.

I. THE ARMENIAN INTELLECTUAL PROPERTY AGENCY

1. The Armenian Intellectual Property Agency (AIPA) is the State authority responsible for registering industrial property subject matter (patents, trademarks, utility models, industrial designs). AIPA acts within the Ministry of Economic Developments and Investments of the Republic of Armenia and is responsible for the implementation of relevant intellectual property right (IPR) policies, as well as updating the Armenian industrial property databases and publishing the Official Intellectual Property (IP) Bulletin. It is also engaged in drafting IPR policies, overseeing international cooperation and publicizing other information relating to IPRs. AIPA has a Board of Appeal which deals with appeals that arise in the course of the examination of applications on industrial property subject matter. Furthermore, AIPA plays an important role in the coordination of all the institutions responsible for IPR enforcement. AIPA has a staff of 50.

II. INSTITUTION BUILDING AND NATIONAL STRATEGY ON IPR PROTECTION

A. THE OBSERVATORY ON COUNTERFEITING AND PIRACY

2. In the light of the growing phenomenon of counterfeiting and piracy, the Armenian Observatory on Counterfeiting and Piracy was established in 2009, aiming to support the struggle against infringement in the field of IP, to coordinate the activities of the ministries

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

involved in combating counterfeiting and piracy in Armenia and to provide appropriate practical solutions to these problems. The Observatory incorporates all bodies responsible for IPR enforcement as well as representatives from the public and the private sector.

3. The Observatory members are representatives of:

- the Ministry of Economic Developments and Investments;
- the Ministry of Finances;
- the Ministry of Culture;
- the Ministry of Diaspora;
- the Police of the Republic of Armenia;
- the Customs Office;
- the State Committee for Economic Competition; and
- private organizations representing the interests of right holders.

4. Chaired by the Minister of Economic Developments and Investments, the Observatory is an advisory body and has no authority to issue official documents. It aims to strengthen public-private partnership, facilitate and promote cooperation between IP enforcement bodies and develop initiatives to help right holders protect their IPRs.

5. To meet these aims, a structure has been set up that ensures that stakeholders' views, concerns and feedback on the Observatory's mission, priorities and expectations have a direct influence on its plans and work. Regular consultations are carried out through working groups and in meetings. The Observatory has already proved to be effective in relation to:

- gathering and providing information which facilitates and supports the activities of national authorities and the private sector;
- providing data enabling policymakers to draft effective IP enforcement policies; and
- providing tools and databases to support competent authorities in combating counterfeiting and piracy.

B. NATIONAL STRATEGY ON IPR PROTECTION

6. The National Strategy on IPR Protection was adopted in 2011. The Strategy was developed to create an effective and enforceable system for the protection of IPRs and to improve the economic, creative and investment environment in Armenia. The Strategy took into account the state of play of the IPR system in Armenia, suggestions and concerns expressed by stakeholders, and the actions available to the Government of Armenia in this respect. One of the key objectives of the Strategy was the reform of the IPR system, which would develop the economy and creativity in Armenia and enhance the competitiveness of the country in the global economy.

7. The Strategy was accompanied by a three-year Action Plan.

8. The strategic goals were:

- the adoption of a balanced legislative system;
- strengthening cooperation and coordination between institutions; and
- awareness raising on IP through educating society on respecting IP.

a) Reforms in Legislation

9. Armenia has implemented reforms to its domestic legislation on the registration, maintenance and enforcement of IPRs. The IP laws are harmonized with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and European Union (EU) Directives and are fully approximated to EU standards. With few exceptions, Armenia has ratified the international treaties in the field and it has the intention to do the same with the Beijing Treaty on Audiovisual Performances and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

b) Strengthening the Competences, Powers and Administrative Capacities of the Institutions Responsible for IPR Protection and Enforcement

10. Based on the necessity to strengthen the competences and administrative capacities of the institutions responsible for IPR protection and enforcement, institutional and legislative modifications and amendments have been made to the scope of competences of the police and customs.

11. The Section for Combating Intellectual Property Crimes within the Main Department of Combating Organized Crime of the police was recently granted the status of a Department.

12. Following this example, customs established an IPR unit to coordinate IPR-related issues. This newly established Department on IPR cooperates with national enforcement bodies and IP holders, introduces friendly procedures for IP holders to notify applications for action and receive information regarding IPR infringement alerts, and keeps statistical records.

13. To enable right holders to register IP subject matter with customs was a key enforcement objective and activities were carried out with this aim in mind. Following the undertaking of persistent work, applications have been registered by customs in an IPR registry since 2011.

14. Today, customs, the police and the Prosecutor's Office have specialized departments on the protection of IP, whose main duty is the combating of counterfeiting and piracy.

c) Improvement to the Functioning of the Judicial System

15. Improvements to the functioning of the judicial system were supported by putting emphasis on strengthening the capacity of judges in IPR matters. An initial step took the form of an arrangement, agreed to with the EU Advisory Group to the Republic of Armenia, leading to the organization of specialized training for judges.

16. In 2012, the Ministry of Justice, in cooperation with the EU Advisory Group, held a three-stage symposium. The first stage was for judges, the second for officials of the Judicial Department, and the third for prosecutors. The symposium aimed to facilitate dialogue and awareness raising on the on-going Armenian reforms in the field of IPR.

III. THE IMPLEMENTATION OF THE TWINNING PROJECT

17. From 2012 to 2014, the IP Agency carried out the Twinning Project on Strengthening the Enforcement of Intellectual Property Rights in Armenia² together with the Danish Trademark and Patent Office as Senior Partner and the European Public Law Organization, Greece, as Junior Partner. The beneficiaries of the project were entities engaged in IPR protection and enforcement, namely the police, customs, the Prosecutor's Office, the judiciary, the Ministry of Justice and the collective management organization ARMAUTHOR.

18. The total duration of the project was 29 months, covering the period of February 2012 to June 2014. The main purpose of the twinning project was to introduce measures for strengthening the overall IPR enforcement capacity of the Armenian society – public institutions, private entities and the general public – to increase awareness of and stronger involvement in the protection of IPRs in line with the EU development directions and as part of executing the Armenia's policy and reform strategy in IPR enforcement.

19. The project consisted of three components, which covered the following issues:

- strengthening the IPR enforcement infrastructure (institution building, legal alignment etc.);
- strengthening the IPR enforcement capacity of the main stakeholders; and
- awareness raising of IPR enforcement.

20. The project also assisted in enhancing cooperation with international institutions and thereby created the foundation for an enlarged network of enforcement.

21. An assessment of training needs was carried out to ensure capacity-building activities were appropriately tailored to the needs of beneficiaries. Based on this assessment, a series of seminars, capacity-building activities and awareness-raising campaigns have been organized over the course of the project with the help of EU experts in different fields.

IV. ACTIVITIES TO RAISE IP AWARENESS

22. The highest levels of IPR infringement usually occur in countries in which stakeholders and the general public have a very low level of IP awareness. Low awareness makes any anti-piracy campaign a difficult challenge. Armenia is one of the countries where IPR awareness is low among not only enforcement bodies, but also right holders and the public at large.

23. AIPA has conducted various activities and programs aimed at disseminating information on IP and increasing awareness among various target audiences. Several of these activities have been carried out in cooperation with different IP institutions and with the support of international organizations including the World Intellectual Property Organization (WIPO), the Eurasian Patent Office (EAPO) and the European Union Intellectual Property Office (EUIPO).

² Twinning is an EU instrument designed to facilitate institutional cooperation between public administrations of EU Member States and of beneficiary or partner countries. Twinning projects organize peer-to-peer activities for public sector experts from EU Member States and those of beneficiary countries with a view to achieving operational results.

24. AIPA plays a large role in the enhancement of professional knowledge in the sphere of IP among police and customs employees, through analyses of raised problems and clarification of legislation and its practical implementation. In order to ease further cooperation it was agreed to periodically conduct discussions on problems and legislation implementation as well as to provide professional consultations.

25. Meetings with entrepreneurs on the importance of IP protection are being conducted periodically. IP right holders receive consultations on their rights by AIPA staff as a part of their daily work.

26. During the last years, WIPO outreach publications, including those aimed especially at small and medium-sized enterprises (SMEs), have been translated and published with the aim of raising public awareness. They have been distributed to universities, libraries, the Small and Medium Entrepreneurship Development National Centre, and other interested organizations.

27. Over the past four years the IP Moot Court Competition has become one of the biggest and most popular IP events in Armenia. Once a year, it draws together a wide range of people in the IP field from both the private and public sectors. Students from private and public law schools attend to compete with each other and showcase their skills and knowledge.

28. Last year, the first IP Summer Academy was organized in Armenia by the Intellectual Property Rights Center and the American University of Armenia Extension Program, and co-sponsored by the Commercial Law Development Program (CLDP) of the United States Department of Commerce. This two-week advanced IP course provided a forum for participants to discuss different aspects of IP protection, including how IP laws affect their work, and how their individual or collective actions may increase the effectiveness of the IP protection system in Armenia and elsewhere. The lecturers were professionals in their respective fields and represented AIPA and various segments of the local and international IP community of scholars and practitioners.

29. In 2016, the Eurasian Economic Commission and the Ministry of Industry and Trade of the Russian Federation, with the support of the Government of Armenia, held the Fourth International Anticounterfeiting Forum in Yerevan. It was dedicated to discussions of the problems of protecting IPRs and the topic of trafficking in counterfeit industrial products. The Anticounterfeiting Forum is a regular central discussion platform in the Eurasian Economic Union. The main objectives of the Forum is constructive dialogue and the development of common solutions by Member State representatives, the business and science communities, and the general public, with a view to creating a legitimate market of goods and services.

V. CONCLUSION

30. In addition to ongoing initiatives and activities there are still several big challenges facing Armenia in terms of IPR protection. These challenges include but are not limited to the reduction of the level of piracy and counterfeiting; completion of the approximation of the Armenian legislation with EU standards; assuring effective enforcement of IPR protection legislation, especially with regard to countering piracy and counterfeiting; increasing the efficiency of the enforcement bodies (police, courts, customs etc.); and raising IPR awareness among the state authorities responsible for IPR policies and enforcement and the public at large.

COORDINATING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS: A KEY GOAL IN THE NATIONAL INDUSTRIAL PROPERTY STRATEGY OF CHILE

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ABSTRACT

In Chile, several institutions have enforcement powers in line with their respective mandates and competences, but until recently no coordination body existed. In 2016, Chile launched a National Industrial Property Strategy, which contains a proposal of 60 measures, four of them falling within the area of enforcement of intellectual property (IP) rights. They include the creation of a Working Group on the Enforcement of Intellectual Property Rights (the Working Group).

The Working Group was created in 2016 and is composed of the main agencies involved in enforcement. Its purpose is mainly to serve as a forum for information and coordination for all members and, if necessary, to make proposals on public policy, enforcement and normative reforms. It has already drafted a work plan that addresses cross-training, infringements via electronic commerce and education, among other issues.

I. INTRODUCTION

1. In late 2016, the National Industrial Property Strategy was launched in Chile¹. This document is the result of more than two years of work by a team of the National Institute of Industrial Property (INAPI)² with the support of the World Intellectual Property Organization.

2. The strategy constitutes a set of steps and measures intended to promote and utilize IP as an effective instrument of economic and social development, so that it fosters innovation and the spread of the knowledge and also contributes to regulating the market and avoiding confusion among the consuming public.

3. In preparation of the document, INAPI launched a public consultation in 2015³. With regard to the enforcement of IP rights (IPRs), the replies indicated that improvements were necessary, especially in relation to the capacities of police officers, inspectors and judges. While it was acknowledged that efforts had been made, it was felt that these officials should have access to more and better training. The replies also emphasized that although the rate of infringement in Chile was not high, it could be further reduced if more education on the issue was available.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ The Strategy (in Spanish only) is available at: www.inapi.cl/portal/publicaciones/608/articles-9870_recurso_1.pdf.

² Besides registering industrial property rights, INAPI also has a legal mandate to promote the protection of industrial property and to disseminate the technological know-how and information it holds.

³ This conforms to Law No. 20.500 on Associations and Civil Participation in Public Management, which has the purpose of taking account of public opinion in formulating public policy.

4. The Strategy contains a proposal of 60 measures to be implemented in different areas in the short and medium term, four of which fall within the scope of IPR enforcement:

- enforcement training, especially for judges and the Public Prosecutor's Office;
- Working Group on the Enforcement of IP Rights (the Working Group);
- statistics on enforcement; and
- feasibility study for the creation of an arbitration mechanism for the settlement of IP disputes.

This document will deal with the creation, operation and initial challenges of the recently constituted Working Group.

II. WORKING GROUP ON IPR ENFORCEMENT

5. The first thing to bear in mind regarding IPR enforcement in Chile is that the country has several institutions that have powers depending in line with their respective mandates and competences. Until recently, they lacked a forum allowing them to plan, share information and coordinate their efforts, except in specific cases. In addition, in the case of industrial property rights administered by INAPI such as trademarks, patents and geographical indications/appellations of origin (GI/AO), there is no public action for criminal prosecution, but instead a special procedure, the "public action following the intervention of an individual", which requires, for public prosecution to be triggered,⁴ the right holder to act first. This also compounds the existing difficulties in coordination among the various institutions responsible for IPR enforcement.⁵

6. Thus, pursuant to Recommendation 6 of the Strategy, the first session of the Working Group was held in late 2016 and attended by the main agencies active in the area. The purpose of the Working Group is mainly to serve as a forum for the exchange of information and as a coordination tool for all its members and, if necessary, to make proposals in matters of public policy, enforcement and normative reforms, both legal and regulatory.

A. CONSIDERATIONS UNDERPINNING THE CREATION OF THE WORKING GROUP

a) Establishment

7. Although it was INAPI that promoted the National Industrial Property Strategy, invited the different participants to join the Working Group and has convened its meetings to date, the coordination of the Working Group is collective, and so far it has no institutional framework beyond what is stated in the Strategy. This does not preclude, in the future and after an evaluation of the Working Group's functioning, the signing of a cooperation agreement between the different participating institutions that would establish an operational framework.

⁴ Except for urgent investigative measures necessary to prevent or stop the commission of a crime.

⁵ The new draft Industrial Property Law currently under discussion will incorporate public prosecution for these crimes. This was a request of the Public Prosecutor's Office, the Customs Service and the Special Police, which consider it fundamental for effective enforcement action and measures.

b) Bodies Involved

8. Chile has various bodies responsible for granting or registering IP rights:

- the Department of Intellectual Rights (DDI), responsible for the registration of copyright;
- INAPI, responsible for the granting or registration, as the case may be, of patents, utility models, industrial designs, layout designs of integrated circuits, trademarks and GI/AO;
- the Agriculture and Livestock Service (SAG), responsible for the protection of varieties of plants and for certain AOs, mainly in the area of wines and spirits; and
- the Institute of Public Health (ISP), responsible for the registry of regulated health-related products (medicines and cosmetic products).

9. Except for the SAG, these bodies are not responsible for enforcing the rights they grant or register.

10. Moreover, a number of public institutions participate directly in detecting, gathering intelligence on, investigating, prosecuting and punishing IPR infringements:

- the Intellectual Property Crime Investigation Brigade (BRIDEPI);
- the *Carabineros de Chile*;
- the Internal Revenue Service (SII);
- the Public Prosecutor's Office;
- the National Customs Service; and
- ordinary courts of justice, in civil and criminal matters.

11. At this initial stage of the Working Group, it has been decided to invite public bodies that have a more direct influence on the enforcement of IP⁶. While the possibility of inviting more participants remains open, the current configuration has helped to make organizing meetings easier and information sharing more fluid.

12. Hence, the current members of the Working Group are as follows:

- the National Customs Service, competent for border measures;
- the SII, which is responsible for internal tax inspection, because tax rules are violated every time IP is infringed;
- the BRIDEPI of the Investigation Police Branch, a specialized unit with national jurisdiction in IP crimes;
- the Public Prosecutor's Office, whose function is to direct the investigation of crimes and prosecute the accused in court; and
- the DDI and INAPI which, although lacking enforcement powers, are the two main institutions that grant or register IPRs in Chile.

13. The differing mandates of the institutions, and their limited number of employees, who generally perform multiple functions and hold different responsibilities, affect the availability of time for new tasks. In addition, a particular problem for INAPI is that the office of the National

⁶ For the moment, and without precluding any participation in the future, there is no institutional participation by the private sector. Under specific circumstances, however, it is possible to coordinate with the private sector, in particular given the need for private action foreseen in some cases. It should also be noted that the private sector coordinates another initiative, the Observatory on Illicit Trade (<http://www.observatoriocomerccioillicito.cl/>), in which governmental agencies and private entities and associations participate.

Customs Service is located in Valparaiso, unlike the rest of the institutions that have their head offices in Santiago de Chile.

14. Another issue to consider is that the Working Group lacks a specific budget. All its expenditure is funded through the regular annual budget of each participating body, according to its means.

15. All these factors must be taken into account when establishing a Working Group and determining the frequency of its meetings. That is why, at least at this first stage, the Working Group intends to meet three to four times a year, in order to avoid overloading the schedules of individual bodies. So far, three meetings have been held. The rest of the coordination is done via e-mail.

B. ISSUES TO BE ADRESSED BY THE WORKING GROUP

16. The first thing the Working Group did when it was established was to request the representative of each of its member institutions to explain the main problems of that institution with regard to IPR enforcement. Given the varied nature of the members, their problems are obviously also very different. A common concern, however, was the lack of coordination among agencies. Although the officials of each of the entities know each other and often work together in IP-related activities, it is necessary to have a forum for the simultaneous and coordinated discussion of issues.

The current work plan addresses the issues set out below.

a) Cross-training

17. Leveraging the experience and knowledge of each of the participating institutions, the aim is to develop a training plan that is carried out by the same experts from each of the participating entities. An annual training calendar is being developed. The different stakeholders will propose the most convenient dates for training both in Santiago de Chile and in the regions.

b) Sharing Statistics and Creating Information Focal Point

18. Each of the institutions currently participating in the Working Group has designated a point of contact. This person serves not only to share information and facilitate contact with that institution, but also to provide statistics that allow for more in-depth analysis of enforcement.

c) E-commerce

19. One of the first challenges of the Working Group is to draft a joint document reflecting the current situation of IP infringements in electronic commerce, in order to evaluate steps to be taken to address the issue.

d) Communication and Education

20. Each institution has presented its current initiatives and the others have offered support. The aim is also to ensure coordination between the communication managers of these

institutions, in order to highlight achievements and to generate more knowledge and information on the subject.

e) Legal Reforms

21. Each of the institutions reports on legal reform initiatives in their respective areas that are currently being developed or discussed and that affect the enforcement of IPRs. The aim is to ensure that other participants know these projects, with a view to generating possible improvements, additions or simply eliciting support for the bills in Congress.

f) Storage of Seized Goods

22. This issue is of great importance to BRIDEPI, the Customs Service and the Public Prosecutor. Joint efforts within the Working Group are crucial for achieving a solution that helps these institutions to better meet the needs they normally face when performing their duties during the seizure of infringing goods.

III. CONCLUSION

23. We hope that the operation of the Working Group will allow us to develop an IP system that is more integrated and that the Working Group will serve as a forum for dialogue, learning and coordination. This is work in progress and we trust it will contribute to improving the IP environment in Chile.

COORDINATING THE ENFORCEMENT OF INTELLECTUAL PROPERTY IN CHINA – EXPERIENCES FROM THE NATIONAL AND LOCAL LEVEL

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ABSTRACT

In 2008, China released its Guidelines of National Intellectual Property Strategy, placing intellectual property (IP) as the fundamental safeguard and stimulus of innovation.

To illustrate best practices in IP enforcement coordination in China, two contributions are presented: one on the experiences made at the national level by the Office of the National Leading Group on the Fight against Intellectual Property Rights (IPR) Infringement and Counterfeiting (the National Leading Group) and the other on the experiences made at the local level by the Shanghai Municipal People's Government (SMPG).

At the national level, the Chinese Government attaches great importance to IP protection and has achieved positive results thanks to the establishment of the National Leading Group, with a Vice Premier of the State Council as its Chair, a dedicated group which leads nationwide actions against IP infringements and actively enhances collaborative cross-agency, cross-regional and cross-border enforcement efforts.

At the local level, the SMPG has worked alongside WIPO to facilitate awareness-raising, training and capacity-building activities in the field of IP. In addition, the SMPG makes efforts to build capacities in the area of IP in Shanghai, including through the coordination of administrative enforcement measures through joint cross-agency meetings.

I. INTRODUCTION

1. In 2008, China released its Guidelines of National Intellectual Property Strategy, placing intellectual property (IP) as the fundamental safeguard and stimulus of innovation. "China fully recognizes that, in order to construct an IP powerhouse, one has to create a culture of respecting knowledge, admiring innovation and abiding by the law as well as enhancing public awareness of IP"¹. The Chinese Government attaches great importance to developing the IP undertaking in a coordinated and integrated manner. As a result, an inter-agency coordination mechanism was established, namely the Inter-Departmental Conference of Implementation of the National IP Strategy, whose office is hosted by the State Intellectual Property Office of the People's Republic of China (SIPO).

2. To illustrate best practices in IP enforcement coordination in China, two contributions are presented: one on the experiences made at the national level by the Office of the National Leading Group on the Fight against Intellectual Property Rights (IPR) Infringement and

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¹ SIPO Commissioner Dr. Shen Changyu, *China – On Course to Become an IP Powerhouse*, WIPO Magazine, Special Supplement November 2016, available at: http://www.wipo.int/wipo_magazine/en/2016/si/index.html.

Counterfeiting (the National Leading Group) and the other on the experiences made at the local level by the Shanghai Municipal People's Government (SMPG).

II. ENHANCING NATIONAL COLLABORATION ON ENFORCEMENT ACTIONS TO FIRMLY REPRESS INTELLECTUAL PROPERTY INFRINGEMENT IN CHINA – THE WORK OF THE NATIONAL LEADING GROUP ON THE FIGHT AGAINST INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND COUNTERFEITING

A. INTRODUCTION

3. With a remit to organize nationwide action against intellectual property (IP) infringements, the National Leading Group on the Fight Against Intellectual Property Rights (IPR) Infringement and Counterfeiting (the National Leading Group) was set up by the Chinese Government in November 2011, with a Vice Premier of the State Council as its Chair, and consists of 29 government agencies dealing with administrative enforcement, criminal justice, maintaining social order as well as general legal and publicity matters. Over the past six years, the National Leading Group, in view of economic changes and concerns from home and abroad, has strengthened coordinated efforts through vertical linkage and horizontal cooperation and increased collaborative cross-agency, cross-regional and cross-border enforcement, which effectively curbed IP infringement and safeguarded fair competition in the market.

B. MAIN OBJECTIVES OF THE WORK OF THE NATIONAL LEADING GROUP

a) Promoting Cross-sectoral Collaboration

4. Taking into account the organized nature of IP infringing activities as well as the increasingly diversified production and delocalized distribution chain of IP infringing products, collaborative enforcement efforts across government entities have been vigorously stepped up, and isolated measures have been replaced by cross-agency enforcement at all levels of the production and distribution chain. Member agencies are mobilized to work closely together in an integrated manner to continuously launch targeted enforcement actions in the areas of Internet, rural markets, software authentication and automotive fuel.

5. A centralized information platform promotes effective convergence between administrative enforcement and criminal justice. The platform went live in July 2017 and aims to allow for the seamless online sharing of information on administrative and judicial cases at the central, provincial, county and city levels. The platform has now recorded more than 430,000 entries.

b) Strengthening Cross-regional Governance

6. Mechanisms have been established and institutionalized that allow for regular joint meetings of the provinces and cities in each of three regions, namely the five provinces and cities in the Yangtze River Delta, the five provinces and cities in Northern China and the eight provinces and regions in the Pan Pearl River Delta. The mechanisms facilitate cross-regional cooperation on leads exchange, evidence transfer and case investigation.

7. Since 2017 and based on prior successful practices, the Cloud Sword Alliance, a public-private taskforce in which the National Leading Group participates, has coordinated and organized Internet counterfeiting operations in the 13 provinces and cities in the Yangtze River Delta and the Pan-Pearl River Delta. Moreover, provinces and regions along the Silk Road Economic Belt were guided in their regional cooperation to fight against IP infringements. Such efforts constantly improved governance capacity in relation to the entire production and distribution chain of IP infringing products.

8. Big data cooperation between governments and enterprises was actively explored and enhanced. Alibaba and other e-business platforms provided thousands of leads on alleged criminal activity to relevant enforcement departments, which helped the latter to timely file and efficiently solve cases and to swiftly repress violations.

9. Since 2013, the Chinese government has successively launched more than 170 special enforcement actions against IP infringements, which led to an accumulative total of 1.3 million violations and criminal cases being investigated and prosecuted.

c) Expanding Cross-border Cooperation

10. Adapting to the new trends of further integration of the world economy, international IP enforcement dialogue was enhanced. Within the framework of China's economic and trade relations, multilateral and bilateral interactions and exchanges on IP matters have been carried out for years between China and the United States, Europe, Russia, Switzerland and Japan. In addition, international enforcement collaboration between domestic public security, customs, and quality inspection agencies and their counterparts in relevant countries was strengthened, which effectively safeguarded the legitimate rights and interests of consumers. At the same time, training courses aiming to improve the enforcement and supervision capacity of developing countries were organized through foreign aid channels. For four consecutive years, counselors' meetings were organized for more than a dozen of embassies in China including those of the United Kingdom and the United States. Such in-depth exchange helped to consolidate understanding and mutual trust, which in turn highlights the effectiveness of Sino-foreign IP dialogue.

11. In 2016, the General Administration of Customs carried out seven enforcement operations in collaboration with the United States, European countries, Russia, Japan and the Republic of Korea. The Ministry of Public Security closely collaborated with the International Police Organization (INTERPOL) and the enforcement authorities in European countries and the United States on 21 major cross-border cases through information sharing, assisted investigation, evidence collection, joint actions and judicial assistance. These collaborative endeavors represented a firm response to transnational crimes and received positive feedback from the relevant countries.

III. IPR PROTECTION AND IP CULTURE BUILDING: THE PRACTICES OF SHANGHAI MUNICIPALITY, CHINA

A. COOPERATION BETWEEN WIPO AND SHANGHAI IN THE FIELD OF INTELLECTUAL PROPERTY

12. WIPO has actively supported Shanghai in awareness-raising, training and capacity-building activities in relation to IP through the joint organization of forums, seminars and workshops.

13. Since 2014, WIPO and SMPG jointly organized the *Shanghai International Intellectual Property Forum (SIIPF)* for three consecutive years. A typical example is the thirteenth SIIPF, which attracted about 400 participants from around 50 countries, including government officials, IP experts, scholars and participants from international organizations and business.

14. An in-depth exchange of views took place at the event, which was divided into six sessions: National IP Strategies, IP Commercialization and Utilization, International Cooperation on Building Respect for IP, National Experiences with IP Enforcement Mechanisms, IP Dispute Resolution, and IP Adjudication and Jurisprudence.

15. The participants shared their successful experiences with, *inter alia*, enhancing IPR protection on the Internet, strengthening the building of an IP culture and improving alternative dispute resolution mechanisms, which serves as a useful basis for identifying effective solutions to common IP challenges worldwide.

16. In 2015, the first *WIPO-China Summer School on Intellectual Property* was launched in Shanghai. The *Workshop on Effective Utilization of WIPO Global IP Services* and the *WIPO Mediation and Arbitration Workshop* have also been held annually in the city since 2015.

17. These activities build a multi-level and international platform for the training of and exchanges among government officials, judges, experts and scholars, as well as IP professionals from companies, law firms and other IP service institutions in Shanghai and neighboring regions. They have proved to be popular among all the participants.

B. MEASURES TO BUILD CAPACITY IN IP ENFORCEMENT BY SHANGHAI DURING ITS RUSH TOWARDS BEING ONE OF THE IP HUBS IN THE ASIA-PACIFIC REGION

a) Judicial Protection for IP Rights in Shanghai

18. At present, Shanghai is fully engaged in becoming a science and technology innovation center with global impact.

19. In terms of judicial protection, Shanghai has set up IP judiciary branches at all three court levels. In 2016, courts in Shanghai, for the first time, concluded more than 10,000 IP-related cases. The Shanghai IP Court, one of the first three specialized IP courts in China, was established at the end of 2014. In 2016, the Court received 1,877 cases related to IP, including 904 cases of first instance. 92.26 per cent of these cases are related to scientific innovation, including patents, computer software and trade secrets. Shanghai is increasingly becoming a preferred choice by right holders at home and abroad for their IP litigations.

b) Administrative Protection for IP Rights in Shanghai

20. In terms of administrative enforcement, Shanghai has established a collaborative mechanism through an IP joint meeting at the municipal level, headed by a Vice Mayor, with more than 20 government agencies as its members. Its task is to coordinate the establishment of a rapid response mechanism against IP infringement and to organize campaigns against IP violations by the various law enforcement agencies. In 2016, administrative enforcement agencies in Shanghai initiated 3,570 cases of IP infringement including counterfeiting, involving value of more than CNY 170 million. As an example, throughout the year, the Shanghai Intellectual Property Administration (SIPA) registered and handled a total of 258 cases for patent infringement. SIPA also dispatched staff to 41 large scale international exhibitions, who handled more than 300 complaints about patent infringement disputes on-site. In practice,

administrative enforcement is welcomed by domestic and overseas right holders for its high efficiency and low costs.

c) Alternative IP Dispute Resolution in Shanghai

21. As regards alternative dispute resolution, the Shanghai Arbitration Court of Intellectual Property, established in 2008, has made some preliminary exploration in the field of IP dispute resolution. SIPA also took the first step nationwide to put in place a people's mediation system for IP disputes, which relies on industry associations, mediation centers and intermediary agencies for mediation. Such a system not only reduces the costs of enforcement for right holders, but also enhances the role of social governance in IP protection.

d) Building an IP Culture in Shanghai

22. As regards the development of an IP culture, each April, Shanghai takes advantage of the World Intellectual Property Day to launch its annual campaigns during the *4.26 IP Publicity Week* in such forms as a lecture, forum or seminar and through various channels of newspapers, television, radio and the Internet, with a view to increasing public awareness and respect for the protection of IP. In particular, SIPA holds annual briefings on IP development in Shanghai for officials from Consulates General and representatives of chambers of commerce and international companies located in Shanghai. SIPA also facilitates the publication of a *White Paper on Intellectual Property in Shanghai* and a yearly compilation of the *Top Ten Typical IP Cases in Shanghai*.

COOPERATION AMONG THE ADMINISTRATIVE AGENCIES ENFORCING INTELLECTUAL PROPERTY RIGHTS IN JAPAN – LEGAL AND OPERATIONAL ASPECTS

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ABSTRACT

This document explains the cooperative activities that are conducted among Japan's administrative agencies to curb intellectual property (IP) infringements.

In Japan, no single law regulates IP enforcement in a comprehensive manner. Instead, IP laws, the Customs Act and the Code of Criminal Procedure each contain IP enforcement provisions, which foresee cooperation among some of the relevant administrative agencies in Japan.

The major administrative agencies dealing with IP enforcement are the Japan Patent Office (JPO), customs and the police, which are responsible for implementing the respective laws and enforcing IP within their own competences. The cooperation among them aims at utilizing their expertise. The JPO facilitates customs' or the police's investigation of IP infringements by providing them with expert opinions.

Furthermore, a one-stop consultation office has been established to support Japanese companies by providing advice or guidance as to how to cope with problems caused by counterfeit and pirated goods.

I. INTRODUCTION

1. Collaboration among administrative agencies such as the Japan Patent Office (JPO), customs and the police supports an effective and efficient enforcement of intellectual property rights (IPRs) in Japan. The intellectual property (IP) laws (such as the Patent Act, the Design Act, the Trademark Act or the Copyright Act), the Customs Act and the Code of Criminal Procedure all contain IP enforcement provisions within their respective scope of application, foreseeing such collaboration.

2. For example, the Patent Act determines when there is a patent right infringement and stipulates the applicable civil and criminal sanctions. The Customs Act makes it possible for customs to request the JPO to provide opinions on whether imported or exported goods infringe, for example, trademark rights in Japan. In addition, under the Code of Criminal Procedure, the police can seek an opinion from the JPO when investigating criminal cases involving, for example, alleged trademark infringements. As an operational procedure, all correspondence between customs and the JPO and between the police and the JPO are to be in writing.

3. In addition, the Ministry of Economy, Trade and Industry (METI) set up the Office for Intellectual Property Right Protection (METI Office for IPRP), which provides one-stop consultations on counterfeit and pirated goods. This Office, working in cooperation with

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

Japanese companies, shares knowledge with foreign customs and police authorities on how to determine the authenticity of goods, in order to enhance enforcement measures taken outside Japan against counterfeits of products the IPRs in which are held by Japanese companies.

II. LEGAL ASPECTS OF THE COOPERATION AMONG ADMINISTRATIVE AGENCIES ENFORCING IPRS

A. SPECIFIC IP ENFORCEMENT PROVISIONS IN JAPANESE IP LAWS

4. Article 68 of the Patent Act¹ stipulates that patentees shall have the exclusive right² to work their patented inventions as business activities. Therefore, if a third party works a patented invention as a business activity without the right holder's consent, this infringes the right holder's patent right. In determining whether a third-party activity infringes a patented invention, it is necessary to establish the technical scope of the patented invention (Article 70 of the Patent Act).

5. In addition, Articles 100 to 106 of the Patent Act stipulate the right holders' right to seek an injunction to stop direct and indirect infringements, set out how to calculate damages and determine the procedures applicable to civil infringement lawsuits before a court.

6. Moreover, the Patent Act stipulates the applicable criminal penalties, such as imprisonment and/or fines, against any persons that directly (Article 196)³ or indirectly (Article 196-2)⁴ commit infringements.

7. Provisions comparable to the above-mentioned Articles in the Patent Law are contained in the Design Act, the Trademark Act, and the Copyright Act, dealing with infringements of designs, trademarks, and copyright respectively.

B. IP ENFORCEMENT UNDER THE CUSTOMS ACT

8. Goods that infringe IPRs are prohibited from being exported from or imported into Japan (Articles 69-2(1)(3) and 69-11(1)(9) of the Customs Act), and the persons who did so are subject to imprisonment and/or fines (Articles 108-4(2) and 109(2) of the Customs Act). Customs has the authority, in investigating violations of the Customs Act, to request any suspect or witness to appear at the customs offices in order to question them and examine their belongings or other articles. Customs can also conduct compulsory investigations, including search and seizures if warrants have been issued by the court. In conducting such investigations, under Article 119(2) of the Customs Act, customs may request the JPO to

¹ Patent Act (Act No. 121 of April 13, 1959, as Amended up to Act No. 55 of July 10, 2015), available in WIPO Lex at: <http://www.wipo.int/wipolex/en/details.jsp?id=16061>.

² However, whenever patentees grant exclusive licenses, this provision shall not apply when the exclusive licensees work the patented inventions (Article 68 of the Patent Act).

³ Article 196 reads: "An infringer of a patent right or exclusive license (excluding one who has committed an act that shall be deemed to constitute infringement of a patent right or an exclusive license under Article 101) shall be punished by imprisonment with work for a term not exceeding ten years or a fine not exceeding 10,000,000 yen or combination thereof".

⁴ Article 196-2 reads: "Any person who has committed an act that shall be deemed to constitute infringement of a patent right or an exclusive license under Article 101 shall be punished by imprisonment with work for a term not exceeding five years or a fine not exceeding 5,000,000 yen or combination thereof".

provide an expert opinion as to whether or not it is likely that exported or imported goods infringe industrial property rights⁵. Customs file criminal charges with the prosecution against suspects when the suspects' crimes are extremely malicious.

9. In addition, when customs finds and seizes exported or imported goods suspected of infringing IPRs, it has to determine whether or not the goods actually infringe IPRs. This determination is based on evidence and opinions given by both the right holders and the exporters or importers. Nevertheless, whenever customs finds it difficult to make this determination, it can request the JPO to provide an expert opinion on the technical scope of the patented invention, the registered utility model or the registered design concerned (Articles 69-7 and 69-17 of the Customs Act).

C. IP ENFORCEMENT UNDER THE CODE OF CRIMINAL PROCEDURE

10. Article 189(2) of the Code of Criminal Procedure stipulates that police officers, acting as judicial police officers, shall investigate offenders and any relevant evidence whenever they deem that offenses have been committed. For example, infringements of industrial design rights and trademark rights are offenses, too.

11. The police, in their criminal investigation, may request the JPO to provide an expert opinion as to whether industrial property rights have been infringed (Article 197(2) of the Code of Criminal Procedure)⁶.

III. PRACTICAL ASPECTS OF THE COOPERATION AMONG THE ADMINISTRATIVE AGENCIES ENFORCING IPRS

A. COOPERATION BETWEEN THE JPO AND CUSTOMS OR THE POLICE

12. When customs or the police request an expert opinion from the JPO, they do so in writing and the JPO replies also in writing. Where customs has seized exported or imported goods suspected of infringing IPRs, the JPO is obliged to reply within 30 days. Although expert opinions are not legally binding, customs and police value the opinions and observations of the JPO as professional advice.

13. In addition, customs and the JPO have their staff attend each other's training courses. By so doing, both organizations can share their knowledge on their respective business operations.

B. COOPERATION BETWEEN CUSTOMS AND THE POLICE

14. Customs can file criminal charges with the prosecution against suspects whenever the suspects' crimes are extremely malicious. In such cases, customs furnishes the police with information concerning the cases and conducts joint investigations with them.

⁵ In practice, almost all requests by customs to the JPO concern trademarks registered with JPO.

⁶ In practice, almost all requests by the police to the JPO concern trademarks registered with JPO.

IV. ONE-STOP CONSULTATION OFFICE ON COUNTERFEIT AND PIRATED GOODS

15. Since August 2004, the Japanese Government has been providing advice to companies and organizations in Japan on counterfeit and pirated goods through the METI Office for IPRP. The creation of the Office, pursuant to a decision of the Intellectual Property Strategic Headquarters⁷ of May 2004, responded to the need in Japan for a single government office to provide full-service assistance to businesses victimized by counterfeit and pirated goods.

16. The METI Office for IPRP handles inquiries on laws and serves as a liaison office by coordinating the efforts of relevant ministries (Ministry of Finance, Ministry of Foreign Affairs, National Police Agency, Agency for Cultural Affairs and Ministry of Agriculture, Forestry and Fisheries) and foreign governments. As a government entity, it ensures that all ministries involved in enforcing IPRs have collaborated on the questions raised in the inquiries received before providing a reply.

17. Depending on the content of the received inquiries, the METI Office for IPRP – which has specialized staff with previous experience as an IP lawyer, a JPO patent examiner or a member of the IP division of a private company – replies directly utilizing its staff's knowledge of IP enforcement or it coordinates with the relevant ministry or agency that can appropriately deal with the inquiry concerned. Moreover, when the METI Office for IPRP recognizes a possibly critical situation in which IP infringement is occurring or has occurred, the information will be shared with customs and the police.

18. When the METI Office for IPRP receives inquiries or complaints on counterfeit or pirated goods from general consumers in Japan, it advises them to consult with the Local Consumer Affairs Centers or the Cross-border Consumer Center Japan (CCJ) of the National Consumer Affairs Center of Japan (NCAC).

19. The NCAC provides general consumers with consultation services for various problems with purchased goods or services, including counterfeits or pirated goods⁸, through its Local Consumer Affairs Centers. In addition, the CCJ provides advice on cross-border transactions, including those on the Internet, upon the request of consumers and assists with the resolution of disputes over transactions between Japanese consumers and overseas businesses or between consumers in other countries and Japanese businesses⁹.

⁷ The Intellectual Property Strategy Headquarters (IP Strategy Headquarters) were established in March 2003 under the Intellectual Property Basic Act (Act No. 122 of December 4, 2002). Its task is to develop an annual strategic program on IP creation, protection and exploitation. The latest *Intellectual Property Strategic Program* was published in May 2017. The Head of the IP Strategic Headquarters is the Prime Minister, currently Mr. Shinzo Abe (a Member of the House of Representatives), and the Deputy Heads are the Minister of State with Special Mission for IP, the Chief Cabinet Secretary, the Minister of Education, Culture, Sports, Science and Technology and the Minister of Economy, Trade and Industry. Other ministers and experts in IP are also among the members.

⁸ On October 16, 2014, the NCAC published a press release (in Japanese only) to increase consumer awareness of the risks associated with copied or trademark counterfeit goods (available on the NCAC website at: http://www.kokusen.go.jp/pdf/n-20141016_1.pdf).

⁹ In 2014, the CCJ received over 4,400 inquiries and 55 per cent of those concerned problems with purchases of counterfeits (see the information available on the CCJ website at: <https://ccj.kokusen.go.jp/case/case4>).

V. COORDINATION WITH JAPANESE PRIVATE COMPANIES TO ENHANCE OVERSEAS ENFORCEMENT AGAINST COUNTERFEITS OF PRODUCTS OF JAPANESE RIGHT HOLDERS

20. In order to enhance overseas enforcement against counterfeits of products and goods manufactured or supplied by Japanese companies, the METI Office for IPRP, in cooperation with Japanese companies, holds seminars for and gives lectures to the customs and police authorities of countries where infringements of Japanese companies' IPRs have occurred. These seminars and lectures provide practical knowledge for local customs and police, improving their capacity to determine the authenticity of goods and seize counterfeits.

21. So far, these seminars have been held in Brazil, Chile, China, Egypt, India, Indonesia, Iraq, Malaysia, Myanmar, the Philippines, Russia, Thailand, Viet Nam, and the United States of America.

COORDINATING INTELLECTUAL PROPERTY ENFORCEMENT – AN IMPORTANT PILLAR OF NAMIBIA’S STRATEGIC PLAN FOR BUILDING RESPECT FOR INTELLECTUAL PROPERTY

*Contribution prepared by Mr. Tileinge S. Andima, Chief Executive Officer, and Ms. Ainna Vilengi Kaundu, Acting Intellectual Property Executive, Business and Intellectual Property Authority (BIPA), Windhoek, Namibia**

ABSTRACT

Intellectual property (IP) enforcement validates and safeguards the integrity of the IP system. The IP system, as is the case with any legal system, cannot function without effective enforcement. Namibia has identified IP enforcement as a critical component of the overall national IP policy and strategy. Therefore, the current Draft IP Policy provides, as a key strategy, for the development and implementation of a Strategic Plan for Building Respect for IP which aims at creating an effective and balanced IP enforcement system to contribute to and support the socio-economic development agenda. The IP enforcement system covers both preventive measures, such as education and targeted public awareness, and legal measures.

Current strategies for IP enforcement include effective legal and institutional IP frameworks; education and public awareness; accessible and timely remedies against infringement; effective law enforcement agencies; promotion of the use of alternative dispute resolution mechanisms and arbitration in settling IP disputes; and coordination of the enforcement agencies.

I. INTRODUCTION

1. While Namibia has made some strides in the administration of intellectual property (IP), the 2015 IP Audit Report of Namibia revealed that enforcement was still a major challenge.

2. According to the Audit Report, the ineffectiveness of IP enforcement systems was attributed to:

- inadequate legal measures: available legal remedies against the infringement of IP rights (IPRs) under the existing laws are not adequate, or as nuanced and broad as required under the TRIPS agreement to which the country is a party;
- weak penalties: punishments ordered by courts have been light and optional, ranging from a fee of 300 Namibian dollars or simple imprisonment of no more than three months. Such a penalty is not a deterrent to infringers and is not commensurate to the damage that may be caused by the infringement of IPRs to the right holder, the government and the general public nor to the significant benefit IPR infringers derive from their illicit acts;
- inability of the police to act on its own;

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- delay in the disposition of court cases: this had a negative impact in that IPR holders are discouraged from bringing court actions;
- inadequate knowledge and awareness of IP and the impact of IPR infringement on the part of magistrates and judges;
- inadequate capacity of members of the law enforcement agencies in differentiating between infringing and genuine products and dependence on costly foreign expert services;
- rejection of police testimony: police officers reported that their testimonies are often challenged and rejected in court on the grounds of lack of or inadequate expertise;
- inaccessibility of information on protected IP assets and their current status: such information is not readily available and is obtained only upon request to the IP office;
- inadequately trained human resources: currently only one of the staff members of the Customs and Excise Department has exposure to IP. Members of the police underlined the need for training in and raising awareness of IP;
- lack of co-ordination between the police, customs and other law enforcement agencies; and
- inadequate capacity of right holders to track infringement activities and take them to court.

3. While Namibia has formulated strategies to address all the challenges above, this document will focus its discussion on the lack of coordination of the IP enforcement system. Lack of coordination weakens and undermines efforts aimed at building a sustainable IP enforcement system.

4. The fight against IPR infringement involves a number of stakeholders, namely the right holders, legal practitioners, the IP Office, the police, the judiciary, customs and the public. This breadth suggests that unless the roles and functions of each stakeholder are coordinated, enforcement will remain a challenge.

5. In order to improve the efficiency of the enforcement system, Namibia has adopted, as one of the strategies under the draft IP Policy and Strategy, a mechanism of coordinating enforcement agencies. This strategy has further been reaffirmed in the draft Strategic Plan for Building Respect for IP.

II. IP ENFORCEMENT COORDINATION

A. IP ENFORCEMENT: LEGAL MEASURES

6. Several laws provide for remedies against infringement. The Copyright and Neighbouring Rights Protection Act provides for remedies that include fines, imprisonment and destruction of infringing goods¹.

¹ Sections 51, 52 and 53 of the Copyright and Neighboring Rights Protection Act (Act No. 6 of 1994), available on WIPO Lex at: <http://www.wipo.int/wipolex/en/details.jsp?id=9405>.

7. The Customs and Excise Act provides for border measures against infringing goods². The institutions mandated to implement the law and fight against the IPR infringement include the Ministry of Finance's Customs and Excise Department, the police, prosecutors and courts.

8. The Industrial Property Act contains remedies for infringements of patents, industrial designs and trademarks. In addition, with the intention of facilitating efficiency in the hearing of infringement cases, it established a Tribunal which has jurisdiction in all cases of disputes relating to industrial property³.

B. OTHER ENFORCEMENT MEASURES

9. As a developing country, IP enforcement would not be effective in Namibia without additional non-legal strategies aimed at building respect for IP. These strategies incorporate the promotion of IP education at all levels, the encouragement of generating and commercializing local IP assets and the creation of targeted awareness campaigns. The objective of these measures is to build an IP-conscious society, one which appreciates the value of IP.

C. LEAD ENTITY IN IP ENFORCEMENT COORDINATION

10. Namibia is in the process of developing its Strategic Plan for Building Respect for IP which will outline planned strategies for IP enforcement. The Strategic Plan covers both preventive measures, such as education and targeted public awareness, as well as legal measures. The importance of the involvement of all IP enforcement stakeholders in the development process of the Strategic Plan cannot be overemphasized. To this end, the Business and Intellectual Property Authority (BIPA) has commenced with consultations to facilitate the input of all stakeholders.

11. The strategies for IP enforcement thus include effective legal and institutional IP frameworks; education and public awareness; accessible and timely remedies against infringement; effective law enforcement agencies; promotion of the use of alternative dispute resolution mechanisms and arbitration in settling IP disputes; and coordination of the enforcement agencies.

12. The role of coordination is critical because enforcing IP involves a variety of stakeholders. In Namibia, it rests in the hands of the enforcement agencies. However, as the institution responsible for all IP-related matters in Namibia, BIPA has been entrusted with leading the coordination of IP enforcement. According to the BIPA Act⁴, BIPA was established to enhance the efficient protection of IP in Namibia, which includes the coordination of IP enforcement mechanisms. BIPA's coordinating role in Namibia has been further affirmed in the draft Strategic Plan for Building Respect for IP in Namibia.

D. THE NATIONAL STEERING COMMITTEE FOR BUILDING RESPECT FOR IP

13. Namibia, through the Strategic Plan for Building Respect for IP, intends to establish a National Steering Committee for Building Respect for IP (Committee), comprising of

² Section 123 of the Customs and Excise Act (Act No. 20 of 1998).

³ Sections 215 to 229 of the Industrial Property Act (Act No. 1 of 2012), available on WIPO Lex at: <http://www.wipo.int/wipolex/en/details.jsp?id=16331>.

⁴ The Business and Intellectual Property Authority Act (Act No. 198 of 2016).

representatives the public sector, the private sector, right holders and civil society. For the public sector, high officials in management positions are to participate in the proposed Committee to ensure effective implementation of the strategy.

14. The institutions to be considered for the Committee are:

- BIPA;
- the Ministry of Industrialization, Trade and Small and Medium-sized Enterprises (SME) Development;
- Collective management organizations;
- the Customs Office, under the Ministry of Finance;
- the Police, under the Ministry of Safety & Security;
- the Office of the Prosecutor General;
- the Judiciary;
- right holders;
- legal practitioners;
- the business community; and
- consumer protection organizations.

15. The role of the Committee is to ensure the development and effective implementation of the Strategic Plan for Building Respect for IP in Namibia. The Committee will carry out coordination functions related to enforcement activities including the development of greater expertise; improvement and strengthening of general liaison procedures with all institutions involved in enforcement; enhancement of contacts with right holders and their representative organizations; and participation in public awareness campaigns.

E. AREAS OF IP ENFORCEMENT BEING COORDINATED

16. Coordination is currently focused on the development and implementation of the Strategic Plan for Building Respect for IP in Namibia. Thus, BIPA, in collaboration with WIPO, has held two roundtable meetings with all relevant stakeholders to coordinate their contribution towards the development of the Strategic Plan.

17. In addition to the above, BIPA also cooperates with the Customs Office – a cooperation through which Customs Officials obtains data from BIPA as needed.

18. The draft Strategic Plan provides for a Memorandum of Understanding (MoU) as the basis for coordination.

F. CONCLUSION

19. The development of an effective and inclusive Strategic Plan for Building Respect for IP is imperative to securing the commitment of all stakeholders during the implementation process as well as instilling in them a sense of ownership of the Plan. BIPA is therefore investing in the coordination process.

III. ABOUT BIPA

20. True to its commitment to create a dynamic and comprehensive IP ecosystem, the Government of Namibia has established BIPA. BIPA was formed out of the necessity for a

responsive and effective legal and institutional framework with the capacity to position the use of IP as a strategic tool for socio-economic development. BIPA was created by the Business and Intellectual Property Authority Act, 2012 (Act No. 8 of 2016), which entered into force on January 16, 2017.

21. BIPA serves as the focal point for the registration of business and industrial property, and is responsible for the administration and protection of business and intellectual property. BIPA exists to transform the business landscape and inspire innovation.

22. The objectives of the BIPA Act are, *inter alia*, to:

- facilitate economic growth and development to raise income and promote investment and create employment;
- enhance the efficient protection of business and IP in Namibia; and
- promote the conduct and use of business and IP in Namibia.

23. The functions of BIPA are, *inter alia*, to:

- promote education and awareness of laws relating to business, IP and related matters through outreach and awareness creation programs to inform, educate and sensitize the public;
- advise the Minister, the public sector and the private sector on matters pertaining to business and IP falling within the scope of BIPA;
- make recommendations to the Minister or any other minister or institution of the State on matters relating to the amendment or making of any law in order to promote the efficient operation of business and IP;
- consult with persons, organizations or institutions with regard to matters relating to business and IP; and
- liaise with regulatory authorities on matters of common interest and exchange information with, and receive information from, any such regulatory authority pertaining to matters of common interest or a specific complaint or investigation.

24. In order to promote the enforcement of, and compliance with, the BIPA Act and the applicable legislation including the Industrial Property Act and Copyright Act, BIPA may:

- if requested by the parties to a dispute on any matter relating to this Act or the applicable legislation, facilitate the voluntary resolution of disputes between the parties without intervening or adjudicating the disputes;
- receive or initiate complaints concerning alleged contraventions or non-compliances with this Act or the applicable legislation, evaluate such complaints and investigate such complaints; and
- relay alleged offences to the relevant prosecuting or regulatory authority.

REGIONAL COOPERATION ON INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT IN THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

*Contribution prepared by Mr. Allan Gepty, Deputy Director General, Advocacy, Policy, International Relations and Enforcement, Intellectual Property Office of the Philippines (IPOPPL), Taguig City, Philippines**

ABSTRACT

The economic integration of ten Southeast Asian countries into the Association of Southeast Asian Nations (ASEAN) is a major breakthrough in the economic environment of the whole world. However, noting the varying levels of development of these countries, particularly in relation to their legal systems and economic performances, the matter of implementing policies and ensuring their effectiveness relies heavily on a platform of cooperation. For this economic community to be successful, it is important that investments, businesses, and properties including intellectual property rights (IPRs) be protected in a manner that right holders are assured that their valuable rights can be effectively enforced. One of the deliverables in the ASEAN IPR Action Plan is the “development and implementation of a regional action plan on IPR enforcement”. It calls for a unified and holistic approach taking into account the interests of all stakeholders and the different levels of development and capacities of ASEAN Member States (AMSs). Each AMS has its own limitations, and it is in this context that the adoption of an Action Plan on IPR Enforcement and the establishment of a group that will implement the same becomes imperative.

I. INTRODUCTION

1. The economic integration of ten Southeast Asian countries into the Association of Southeast Asian Nations (ASEAN) is a major breakthrough not only for the economic environment of the region but also the entire world. It has changed the landscape of opportunities as well as challenges not only for businesses but also for government authorities. Noting the varying levels of development of these countries, particularly in relation to their legal systems and economic performances, the matter of implementing common policies and ensuring their effectiveness relies heavily on a platform of cooperation.
2. The ASEAN Economic Community (AEC) is a large market with a combined gross domestic product (GDP) amounting to 2.6 trillion United States dollars and a population of over 622 million people. The AEC is said to be the third largest economy in Asia and the seventh largest in the world. For this economic community to be successful, it is important that investments, businesses and properties be protected and that owners and investors are assured that they can enforce their rights.
3. One of the valuable assets and investments that should be given utmost importance is the protection and enforcement of intellectual property rights (IPRs). In an effort to ensure that IPRs are properly addressed both at the policy and implementation level, the ASEAN Working Group

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on Intellectual Property Cooperation (AWGIPC) was established pursuant to the ASEAN Framework Agreement on Intellectual Property Cooperation (Framework Agreement)¹, which was adopted by ASEAN Member States (AMSs) in Bangkok, Thailand, on December 15, 1995.

4. The key objective of the Framework Agreement is to strengthen cooperation among member countries in the field of IP through, among others, promotion of technological innovation and transfer of technology and consultations on the development and standardization of the national IP systems consistent with international standards.

5. The AWGIPC is primarily tasked to develop programs, projects, and activities in relation to all aspects of the IP system in support of the AEC. It also engages in dialogue with partners, such as the World Intellectual Property Organization (WIPO), the European Patent Office (EPO), the Japan Patent Office (JPO), and the United States Patent and Trademark Office (USPTO).

6. To implement its strategies, the AWGIPC develops ASEAN IPR Action Plans. In 2011, the ASEAN IPR Action Plan 2011-2015 was adopted, with one of deliverables being the “development and implementation of a regional action plan on IPR enforcement”. The wish to develop a separate Action Plan stresses the importance that the ASEAN attached to IPR enforcement.

II. REGIONAL ACTION PLAN ON IPR ENFORCEMENT

7. The ASEAN IPR Enforcement Action Plan seeks to foster the exchange of information and best practices among AMSs. The Action Plan builds upon the principles embodied in the Framework Agreement. Under the Framework Agreement, the AMSs agree to undertake cooperative activities, which shall include, *inter alia*, activities to enhance IP enforcement and protection. Such activities include: (a) effective protection and enforcement of IPRs; (b) cooperation in cross-border measures; and (c) networking between judicial authorities and IP enforcement agencies.

8. In the drafting of the Action Plan, the AWGIPC took into account not only the interests and concerns of the right holders but also the views and perspectives of the consumers, public authorities, and the ASEAN as a region.

9. The following paragraphs summarize the relevant deliverables of the Action Plan.

A. INFORMATION AND AWARENESS-RAISING ACTIVITIES AND MATERIALS

10. Awareness raising is considered a potent tool to curb counterfeiting and piracy. Explaining the reasons why counterfeit and pirated goods should not be supported is a way to change the public mindset and encourage respect for IPRs. The Action Plan foresees the development of an information and awareness-raising campaign, including the creation of information materials. This campaign will be rolled out in various symposia, workshops, and on other communication platforms.

¹ The Framework Agreement is available at: http://asean.org/?static_post=asean-framework-agreement-on-intellectual-property-cooperation-bangkok-thailand-15-december-1995.

11. For the development of this awareness-raising campaign, the involvement of the private sector is imperative and it is therefore necessary to enter into strategic partnerships with businesses and the industry. At present, the AWGIPC is working with the International Chamber of Commerce (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) to develop common information materials depicting the dangers and serious effects of counterfeiting and piracy. The information materials are to be deployed in major ports to underline that the ASEAN is united in its efforts to curb IPR violations.

B. STATISTICAL INFORMATION ON IPR ENFORCEMENT

12. Another deliverable is the collection of publicly available statistics in relation to enforcement, including statistical information on the adjudication of IP disputes by the judiciary. Collating data and information is highly important not only to keep track of the progress of enforcement operations but also to inform policy reforms. In the Philippines, for example, the Intellectual Property Office of the Philippines (IPOP HL), with the cooperation of the members of the National Committee on Intellectual Property Rights (NCIPR), gathers and collates data on enforcement operations related to, *inter alia*, implemented search warrants and warrants of seizure and detention, seized counterfeit and pirated goods, the nature, quantities, values and sources of counterfeit and pirated goods, and the number of cases filed, as well as their status and outcome. This practice needs to be elevated to the regional level so that enforcement agencies in AMSs can be properly guided not only in policy formulation but also in the operational aspects of enforcement.

13. To operationalize this, AMSs shall assign a focal point or set up a coordinating unit in each AMS, that will gather and collate data, and forward the data to the Philippines, through IPOP HL, as a country champion which spearheads the implementation of the initiatives and projects approved by the AWGIPC in relation to IPR enforcement. The development of a portal is also envisioned so that data and information can be uploaded regularly.

14. Meanwhile, a survey on the available statistical information in each AMS has been circulated, which will serve as the basis for identifying and sharing enforcement information. Once completed, an information template will be established, to be used by the respective focal points to provide periodic updates.

C. REDUCED MOVEMENTS OF PIRATED AND COUNTERFEIT GOODS INTO AND BETWEEN AMSS ARE DOCUMENTED

15. While this deliverable is challenging, it is viewed that collaboration with experts in the field of customs procedure should be undertaken. There is a need to establish a mechanism for monitoring the movement of pirated and counterfeit goods. Such documentation may be used as reference by national enforcement agencies to make tactical decisions in their operations against IPR violations. Based on initial evaluation, most counterfeit and pirated goods are either imported or smuggled. In fact, it is observed that whenever seizures at the border are high, seizures of counterfeit and pirated goods in the physical market are low. If seizures at the border are low, then seizures at the physical market are high. Accordingly, the operations within the customs jurisdiction must at the very least be monitored and documented.

D. NATIONAL ENFORCEMENT GUIDELINES

16. As another deliverable, it has been foreseen to develop national enforcement guidelines that are consistent with the civil, criminal and administrative structures of AMSs and based on best practices. To achieve this, it is necessary to regularly conduct workshops and roundtable discussions with IP enforcement agencies with a view to identifying concerns and challenges as well as best practices in relation to IP enforcement.

17. Reference materials for public authorities may also be produced, with up-to-date information on best practices in the enforcement of IPRs. These reference materials may include publications of landmark decisions in IP cases in each AMS, best practices in IPR investigation and case build-up, and information on the latest tools and technologies available to support IPR investigation. In the Philippines, for example, a manual for the investigation and prosecution of IP cases and an IP Case Index have been published and are being used by investigators, prosecutors, judges and even lawyers in handling IP cases.

E. WORKSHOPS AND SYMPOSIA

18. The AMSs, through the AWGIPC, shall continue to cooperate with dialogue partners to organize capacity-building seminars, workshops, and consultative meetings on IP enforcement issues and developments targeted at the various relevant stakeholders. Where such capacity-building activities are organized for public authorities, their scope and coverage should be tailored to each type of actors attending and their specific functions, such as prosecutors, judges, customs, and enforcement officers. Strategic and aligned capacity-building programs among agencies involved in IPR enforcement ensure the same level of appreciation, understanding, and application of various laws, rules and regulations relative to IPR protection and enforcement. In this process, issues and concerns in relation to the investigation, prosecution, and adjudication of cases are likewise identified and addressed. This cooperation is viewed to contribute to the speedy disposition of cases as well as consistency in the application of laws, rules and regulations.

19. To complement this initiative, it is envisioned to make judicial and administrative decisions resolving IPR cases available through a database that may be published on the ASEAN IP Portal. A compilation of the decisions may also be published as reference materials to be distributed among judges and adjudicators during regional workshops, fora, and symposia.

F. COORDINATION MECHANISM TO ENHANCE ENFORCEMENT OPERATIONS

20. It is recognized that coordination in a centralized system may be difficult to operationalize in the region. However, noting the need to institutionalize the coordination in the region, any mechanism to achieve this must not only be based on mere communication but must include an the establishment of a core group of experts that will regularly meet, monitor and manage the programs and activities identified in the Action Plan.

III. THE NEED FOR A NETWORK AND GROUP OF IPR ENFORCEMENT EXPERTS

21. In October 2015, AMS representatives met in Manila during the IP week celebration in the Philippines. One item on the agenda was the need to form a group of IPR enforcement experts to carry out the plans, programs and activities of the Action Plan. The proposal was approved and the AWGIPC established the ASEAN Network of IPR Enforcement Experts (ANIEE).

22. The ANIEE is composed of AMS representatives involved in IPR enforcement. ANIEE members shall work collaboratively with each other. Among others, they are expected to cooperate with the ASEAN Secretariat and the country champions on monitoring the progress and assessing the effectiveness of projects and programs, on facilitating information exchange on IPR enforcement issues, on developing IP enforcement training programs, and on creating a mechanism to facilitate efficient communication and flow of information between the ANIEE members and the AWGIPC.

23. To aid ANIEE in the performance of its functions, collaboration with partners is important in order to facilitate meetings and implement the Action Plan. It would be beneficial, for example, if partners such as the United States Patent and Trademark Office (USPTO) and the European Union Intellectual Property Office (EUIPO), which regularly provide capacity building on IPR enforcement, aligned their priorities with the strategic initiatives of the ASEAN.

IV. BEST PRACTICES IN REGIONAL COOPERATION

24. The following may be considered elements of best practices in effectively collaborating on IPR enforcement among countries with different legal systems and levels of economic development:

- adoption of a regional Action Plan on IPR enforcement;
- creation of an expert group on IPR enforcement in charge of the implementation of the Action Plan;
- strategic collaboration with institutional partners and organizations of the private sector in the field of IP and businesses;
- alignment of technical assistance with the strategic objectives and programs of the Action Plan;
- regular interaction and engagements among AMSs; and
- development of uniform information materials and programs relative to IPR enforcement across the region.

V. CONCLUSION

25. The growing economic activities and engagements in Southeast Asia brought to the fore a need to foster all-embracing cooperation on IPR enforcement. It calls for a unified and holistic approach to enforcement that takes into account the interests of all stakeholders and the different levels of development and capacities of each AMS.

26. In addition to identifying the strategic goals and initiatives, it is also important to establish a concrete platform and mechanism for AMSs to meet, interact, discuss, deliberate and implement the identified goals and objectives. It is to be noted that while AMSs may agree on certain objectives, the manner by which they attain these objectives may vary. Each AMS has its own limitations in the execution of every plan. It is in this context that the adoption of a specified Action Plan on IPR Enforcement and the establishment of a dedicated group that will implement the same becomes necessary.

27. The Action Plan serves as the road map and, at the same time, the binding framework among AMSs. It addresses any and all concerns in the respective legal system of each AMS that might affect the realization of ASEAN IPR enforcement programs.

28. The ANIEE is not only expected to carry out the Action Plan but will also be responsible and accountable for its implementation.

INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION AND THE ROLE OF THE ROYAL THAI POLICE

*Contribution prepared by Police Colonel Dr. Chavalit Chavalitphongpun, Superintendent (Inquiry), Economic Crime Suppression Division, Central Investigation Bureau, Royal Thai Police, Bangkok, Thailand**

ABSTRACT

This paper provides an overview of the role of the Royal Thai Police, under the direction of the National Committee on Intellectual Property Policy, to cooperate and coordinate with relevant law enforcement agencies with a view to dealing with intellectual property (IP) infringements. In particular, it seeks to explain those functions of the Royal Thai Police which are specifically related to the enforcement of IP, coordination of justice procedures, capacity building for enforcement agencies, training on distinguishing between authentic and counterfeit goods, and raising awareness of IP.

I. INTRODUCTION

1. Throughout the last five years, the amount of intellectual property (IP) infringements in Thailand was consistently high, leading to an increased rate of litigation. According to records, between 2011 and 2015 almost 75 per cent of IP litigation at the Court of Central Intellectual Property and International Trade Court (CIPITC) were comprised of criminal cases¹. This is not consistent with the intention of the government, since the high rate of IP infringement not only affects State capability², but also the credibility and reputation of the country, as well as the economy. This is a particular concern as these problems are taken into consideration by other countries in order to exclude Thailand from certain trade relations. As a result, the United States Trade Representative has put Thailand on its Priority Watch List³ on the grounds of providing insufficient IP protection and uses these concerns to justify trade barriers for goods imported from Thailand. Consequently, IP infringement in Thailand is still a problem of great concern for right holders, officials and the government.

2. It can be said that Thailand faces problems regarding IP right (IPR) infringements akin to most developing and less developed countries. However, the Thai Government does not ignore this problem. It rigorously enforces the law and has underscored its dedication to a policy aiming at suppressing IPR infringement and providing efficient IP protection.

3. In 2016, the Thai Government established the National Committee on Intellectual Property Policy, chaired by the Prime Minister, with the Deputy Prime Minister in the role of vice-chair and with top-level representatives from 20 agencies⁴. The Committee's stated mission is to

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ Statistics from the Court of Central Intellectual Property and International Trade 2011-2015.

² Sanjay Pradhan, *Improving the State's Institutional Capability* (September 1997), available at: <http://www.imf.org/external/pubs/ft/fandd/1997/09/pdf/pradhan.pdf>.

³ Office of the United States Trade Representative, *2017 Special 301 Report* (May 2017), available at: <https://ustr.gov/sites/default/files/301/2017%20Special%20301%20Report%20FINAL.PDF>.

⁴ Regulations of the Office of the Prime Minister on the National Committee on Intellectual Property Policy No. 3/2559 (2016). Formerly, Thailand had the National Intellectual Property Center of Enforcement, established in 2013.

formulate policies and strategies for IP promotion, coordinate effective inter-agency cooperation in the area of IPR enforcement, combat IPR infringements, and improve IP laws and their implementation.

4. This paper will present the role of the Royal Thai Police, under the direction of the National Committee on Intellectual Property Policy, particularly with regard to its cooperation and coordination with relevant law enforcement agencies in dealing with IP infringements.

II. COOPERATION AND COORDINATION MECHANISMS

5. As a response to the inclusion of Thailand on the U.S. Priority Watch List, the National Committee on Intellectual Property Policy, in March 2016, established the Suppression of Intellectual Property Infringement Sub-committee, with the support of 16 relevant governmental agencies and individuals. The Sub-committee has the primary objective of solving issues related to the prevention of IP infringement, reducing problems of IP right holders, increasing the level of IP protection in accordance with international standards, and cultivating Thailand's image as an IP-friendly country⁵.

6. This Sub-committee is strengthening links in IP enforcement by facilitating connections and cooperation between government agencies working on IP matters and tasked with suppressing IP infringement. Communication lines and complementary processes are established (landline, cell phone, video call and video conference) to ensure that there is fast and proper communication between the officials of the agencies, that the regulations of each agency are in line with those of the others and that the agencies within the Sub-committee are able to work closely with others.

7. In addition, the Sub-committee is at the highest tactical level of coordination. As such, it manages all tasks and activities aimed at preventing and combatting IPR infringement and, to that end, has formulated an action plan. The chairman of the Sub-committee is able to instruct the Department of Intellectual Property (DIP) to cooperate with other agencies including the Royal Thai Police, the Department of Special Investigation (DSI) and the Royal Thai Army, to take immediate action in suppressing IP infringing goods nationwide, particularly by targeting the 27 markets notorious for IP infringement⁶. To suppress these markets, relevant agencies will send teams to each area without any warning and concentrate on large traders of illegal products.

III. THE ROLE OF THE ROYAL THAI POLICE

8. Following the launch of the Sub-committee's action plan, the relevant government authorities, such as the Royal Thai Police, DIP, the Customs Department, DSI and the Royal Thai Army, with the support and cooperation of right holders, have actively taken various measures to suppress IP infringement, encourage public awareness in relation to the prevention of IP infringement, and provide information relating to infringement. Some examples of these activities are detailed below.

⁵ Order of the National Committee on Intellectual Property Policy No. 1/2559 (2016).

⁶ Notorious markets in Thailand include, among others, MBK, Pantip Plaza, Chatuchack or JJ Market in Bangkok, Night Bazaar in Chiangmai, Huahin Market in Prachuap Khinri Khan, Koh Samui in Surat Thani, Ao Nang in Krabi, Rong Kluea Market in Sa Kaeo.

A. GENERAL ENFORCEMENT EFFORTS

9. From January 2016 to March 2017, DIP reported a total of 9,658 enforcement actions and a seizure of 6,178,482 pieces of counterfeit and pirated goods⁷. Many of these actions led to the arrest of significant infringers and seizure of dangerous counterfeit consumer products. For instance, the Royal Thai Police, together with DIP, the Customs Department, DSI and right holders, arrested producers and vendors of counterfeit products⁸.

10. The Royal Thai Police, along with a peacekeeping force from the 19th Army Circle, troops from the Burapa Task Force and local officials, conducted joint raids at the Rong Kluea Market in Aranyaprathet District, Sa-Kaeo Province. Efforts continued until the market was free of illegal counterfeit products⁹. These operations intensely tackled ongoing IP infringement and aimed to give confidence and morale to those who use their talents and creative ideas to develop new products for commercialization.

B. THE ECONOMIC CRIME SUPPRESSION DIVISION AND ITS TASK FORCE

11. The Economic Crime Suppression Division (ECD) of the Royal Thai Police has specialized expertise in IP. To fulfil its mandate of fighting IP crime nationwide as effectively and rapidly as possible ECD established a task force. With the cooperation of DIP and IP right holders, the task force regularly inspects shopping areas and other locations where IP infringement is common and detains potential infringers and infringing products¹⁰.

C. DESTRUCTION OF INFRINGING GOODS

12. The destruction of confiscated IP infringing products upon court order is one of the most important means to ensure that these products do not reenter the market¹¹. On Friday, March 10, 2017, a large-scale destruction event of confiscated counterfeit and pirated products took place at the base of the Eleventh Infantry Regiment, Royal Thai Army, in Bangkok. This event was organized by DIP in collaboration with the Royal Thai Police, the Customs Department, and DSI, and was attended by both Thai and foreign IP right holders. It resulted in the destruction of 3,639,679 counterfeit and pirated products, weighing an estimated 300 tons and worth 1,756 million Thai Baht¹².

⁷ Statistic from Office of Prevention and Suppression of Intellectual Property Rights Violation.

⁸ Raids were conducted on major production facilities, most of which were located in Udon Thani, Songkhla and Sa Kaeo Provinces, resulting in the apprehension of several suspects. A total of 37,953 items of IP infringing products, worth altogether over 30 million Thai Baht, were seized, ranging from clothing and bags to electrical appliances and cosmetics; see Pattaya Mail, *Lots of counterfeit goods seized in March*, available at: <http://www.pattayamail.com/thailandnews/lots-counterfeit-goods-seized-march-171395> (April 21, 2017).

⁹ Bangkok Post, *Crackdown on Rong Kluea*, available at: <https://www.pressreader.com/thailand/bangkok-post/20170226/281612420176420> (February 26, 2017).

¹⁰ According to the statistics on the performance of the Task Force only in Bangkok between January and December 2016, a total of 2,425 items of IP infringing products, worth altogether over 1.3 million Thai Baht have been seized; see Statistics from Sub-Division 3, Economic Crime Suppression Division, Royal Thai Police.

¹¹ Article 75 of Copyright Act B.E. 2537 (1994), Article 115 of the Trademark Act B.E. 2534 (1994), and Articles 32-35 of Thai Penal Code empower judges to order the confiscation and destruction of IP infringing products as well as specific other materials used to commit the infringements. As far as border measures are concerned, the Customs Department, under the current legislation, has the authority to seize pirated and counterfeit products that are imported or exported and to destroy these products immediately after the completion of the customs procedure – an action which has been carried out on a regular basis by the Customs Department.

¹² National News Bureau of Thailand, *DPM Prawit Chairs a Destruction Ceremony of 300 tons counterfeit and pirated goods worth 1,756 Million Baht* (February 2017), available at: http://nwnt.prd.go.th/centerweb/newsen/NewsDetail?NT01_NewsID=WNPOL6003100010007.

D. COORDINATION OF JUDICIAL PROCEDURES

13. The Royal Thai Police has continuously emphasized the need for efficient legal proceedings and adjudication processes to suppress IP infringements. In this regard, it has worked closely with the Office of the Attorney General and CIPITC and has received their full cooperation.

a) Coordination with the Public Prosecutor

14. In IP infringement cases, ECD inquiry officials conduct the criminal investigation, interview witnesses and analyze available information and evidence with a view to providing an informed opinion as to whether the case should be prosecuted. The above process results in the creation of a file of inquiry which is submitted to the public prosecutor. The public prosecutor may then request the inquiry official to investigate further or refer to the inquiry official witnesses who may be useful to the prosecutor's own investigation. Good coordination between inquiry officials and public prosecutors therefore contributes to efficient IPR enforcement.

b) The Issuance of Search Warrants on Suspected Premises of IP Infringement

15. The speed of issuing a search warrant depends on the completeness of the documents and the reliability of the evidence submitted with the application requesting a warrant. Most of the problems that may hinder the issuance of a search warrant are linked to an incomplete power of attorney from the requesting IP right holder or the perception that a requested search would be excessive, particularly in cases involving the search of entire office buildings for pirated software. Against this background, CIPITC has assigned standing judges to facilitate the issuance of search warrants outside of normal working hours in cases of emergency.

E. CAPACITY BUILDING FOR ENFORCEMENT AGENCIES

16. ECD, together with DIP, has organized yearly training seminars on the prevention and suppression of IP infringement. The seminars target police officers at the inspector and deputy inspector level, who are responsible for the suppression of IP infringement nationwide. Four training seminars were held in 2016, attracting the participation of a total of approximately 1,000 police officers. The seminars aim not only to enhance the knowledge and understanding of police officers in relation to the IP laws and regulations but also to increase their capacity to investigate IP infringement cases.

F. TRAINING ON THE SEPARATION OF AUTHENTIC AND COUNTERFEIT GOODS

17. DIP and other related agencies, in cooperation with the IP holders from the private sector, organize seminars and trainings on the separation of authentic and counterfeit goods for law enforcement officers. These initiatives help increase the efficiency of their operations and their capacity to prevent and suppress future IP infringement. The seminars attain wide interest and participation, especially among officers from the Royal Thai Police, the Customs Department, and DSI.

G. RAISING AWARENESS OF IP

18. ECD, in cooperation with IP right holders, plan to organize an anti-piracy campaign (*STOP PIRACY Buy Original Now: Stop IP Infringement, Don't Buy, Don't Carry, Don't Use Knockoff*) to be featured at the 2017 Commart Thailand Fair. In addition, as requested by a number of government and private agencies, ECD representatives presented the topic of *Problems and Solutions for Managing IP Infringement in Thailand* at various forums organized by government agencies and private organizations, namely the Institute for the Promotion of Teaching Science and Technology and the SE-ED Pub Co., Ltd.

IV. CONCLUSION

19. The Royal Thai Police plays an important role in IPR enforcement. This is especially visible in its cooperation and coordination work with other agencies to suppress IP infringements. In addition, the Royal Thai Police also promotes IP knowledge to the general public. As a result of the continued pro-active action of the Royal Thai Police, under the direction of the Suppression of Intellectual Property Infringement Sub-committee, the occurrence of severe IP infringement has been reduced. In light of the Thai Government's commitment to protecting IPRs and enhancing legal measures to combat counterfeit and pirated products, it can be expected that Thailand will attain the positive reputation of a country substantially protecting IP in the very near future.

COORDINATING COPYRIGHT ENFORCEMENT IN TURKEY

Contribution prepared by the Directorate General for Copyright, Ministry of Culture and Tourism, Ankara, Turkey

ABSTRACT

Law No. 5846 on Intellectual and Artistic Works is the basic law of copyright in Turkey. The main government units in the field of copyright in Turkey are the Directorate General for Copyright (DGC), the Ministry of Interior, the National Police, the Judiciary, and the Ministry of Customs and Trade.

In an effort to set common policies between intellectual property (IP) related entities and ensure coherent implementation, the Intellectual and Industrial Property Rights Coordination Council was set up in 2008 and subsequently developed the *National Intellectual and Industrial Property Strategy Paper*, providing an overall strategy for the term 2015-2018.

The DGC currently administers a registration, a control marks (banderol) and a certification system to prevent copyright infringements and enable enforcement units to inspect, investigate and prosecute copyright infringements effectively and systematically.

I. INTRODUCTION TO THE TURKISH COPYRIGHT SYSTEM

1. Law No. 5846 of December 5, 1951, on Intellectual and Artistic Works (Turkish Copyright Law) is the main law providing the legal framework for copyright in Turkey¹. It primarily contains provisions on the economic and moral rights of authors and holders of related rights (performing artists, phonogram producers, movie producers, and broadcasters) as well as on the procedures and principles for the exercise of such rights including legal remedies and sanctions in case of infringement².

2. Copyright legislation in Turkey has been amended several times for various reasons such as harmonizing with the international conventions and the European Union *acquis*, catching up with technological advances, rendering the collective management system effective and combating piracy. Finally, the current copyright system has been developed in light of international developments and national requirements.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ Law No. 5846 of December 5, 1951, on Intellectual and Artistic Works (as last amended by Law No. 6552 of September 10, 2014), available at: <http://www.wipo.int/wipolex/en/details.jsp?id=17020>. The law protects as intellectual and artistic works: literary and scientific works, musical works, works of fine art and cinematographic works (Articles 2 to 5).

² In addition to the Turkish Copyright Law, there are quite a few secondary legislations in the field of copyright.

II. INSTITUTIONAL FRAMEWORK AND COORDINATION OF COPYRIGHT ENFORCEMENT IN TURKEY

3. The main relevant government units in the field of copyright in Turkey are as follows:

- the Directorate General for Copyright (DGC) – Ministry of Culture and Tourism;
- the Law Enforcement Units (Turkish National Police – Ministry of Interior);
- the Judiciary;
- the Customs Authority – Ministry of Customs and Trade; and
- the Intellectual and Industrial Property Rights Coordination Council.

A. DIRECTORATE GENERAL FOR COPYRIGHT

4. The DGC, affiliated with the Ministry of Culture and Tourism, is assigned to fulfill tasks and duties in the field of copyright in Turkey. It is responsible for:

- setting, implementing and following strategies to regulate, protect and develop copyright in harmony with the public interest and economic and social development
- following up on international developments;
- taking necessary measures in order to prevent copyright infringements;
- carrying out preparatory works for legislation;
- determining the principles according to which administrative and legal measures are to be implemented;
- preparing the infrastructure of the copyright system in line with technological advances and ensuring its effective functioning;
- ensuring cooperation and coordination with collective management societies, relevant entities and bodies; and
- organizing or supporting national or international scientific, cultural, artistic and social projects and events in the field of copyright.

B. LAW ENFORCEMENT UNITS

5. The Turkish National Police, through the Security Department at the central level and the Intellectual Property Crime Offices under the Security Section Directorates at the level of the 81 provinces, is responsible for carrying out activities stipulated in the laws regarding the protection of intellectual property rights (IPRs) and combating violations of rights in Turkey. Law enforcement units are authorized to conduct investigations *ex officio* against offences involving control marks (banderoles).

C. JUDICIARY

6. Legal actions in the field of intellectual property (IP) are normally heard by specialized courts. Civil and Criminal Courts for Intellectual and Industrial Property Rights (IIPRs) were established for the first time in 2001. At present, there are a total of 23 IIPR courts in the three biggest provinces of Turkey. Civil courts of first instance and criminal courts of first instance have the jurisdiction to hear IIPR cases in places without specialized courts.

D. CUSTOMS AUTHORITY – MINISTRY OF CUSTOMS AND TRADE

7. The Ministry of Customs and Trade exercises enforcement powers in relation to persons, articles and vehicles within the customs zones in the Republic of Turkey under anti-smuggling practices. IP infringing articles are seized or not allowed to be cleared by the customs administrations – either upon request of the right holders (or their representatives) or *ex officio*.

E. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS COORDINATION COUNCIL

8. Although a legal and administrative structure in line with international norms is in place in the field of IPRs in the country, there has been an obvious need for effective cooperation between the relevant entities. Accordingly, the Intellectual and Industrial Property Rights Coordination Council was set up in 2008 through a Prime Minister Circular.

9. The Executive Directors of all 12 IP-related entities participate in the biannual Council meeting with a view to setting common short, medium and long-term strategies and policies and ensuring their effective and coherent implementation through coordination and cooperation.

10. The Intellectual and Industrial Property Rights Coordination Council has adopted a number of IP policy strategies since its establishment. Lately, as a crucial development, the Council adopted the *National Intellectual and Industrial Property Strategy Paper*³. This paper provides an overall strategy for the IP-related sectors for the term 2015-2018 and contains four main goals and 51 commitments. The four main goals are:

- legislation and practice in line with Turkey's need for improving IPRs with effective implementation;
- ensuring adequate human and institutional capacity for the judicial, customs and law enforcement services actively involved in protecting IPRs;
- improving the effectiveness of the mechanisms for commercialization, market perception, and infrastructure in developing IPRs; and
- increasing public awareness of the IPR system, with the target of Turkey becoming an information and knowledge-based society.

III. ENFORCEMENT MECHANISMS ADMINISTERED BY THE DIRECTORATE GENERAL OF COPYRIGHT

11. The DGC maintains a registration, a control marks (banderole) and a certification system to prevent copyright infringements and enable enforcement units to perform inspection and trial activities in response to such infringements effectively, rapidly and systematically. Furthermore, the inspections carried out by the Provincial Inspection Commissions as well as a copyright automation system (TEHAKSIS) contribute to effective copyright enforcement.

A. THE REGISTRATION SYSTEM

12. Rights granted under the Law on Intellectual and Artistic Works exist from the moment in which works are created, without the requirement to register them. However, a registration system has been established not with the aim of creating new rights but to make it easier for

³ It was published in the Official Gazette July 4, 2015, and is available (in Turkish) at: <http://www.resmigazete.gov.tr/eskiler/2015/07/20150704-8-1.pdf>.

right holders to prove the existence of their rights and to track who is entitled to exercise economic rights. This registration system was established in 1986 for cinematographic and musical productions.

13. In the framework of this registration system, film and phonogram producers shall register locally produced or imported cinematographic and musical works and computer games. All other types of works protected under the Law may be registered upon demand of their authors. The registration system is also highly important with a view to obtaining statistical data regarding the cultural production in Turkey.

B. THE CONTROL MARK SYSTEM (BANDEROLE SYSTEM)

14. The control mark system (banderole system) is compulsory for legal copies of locally produced or imported cinematographic and musical works, computer games and literary works. Holders of rights in other types of intellectual and artistic works can also opt to use the system for reproductions of their works that can be easily copied. It aims to prevent any unauthorized reproduction and imitation of these types of intellectual and artistic works. A control mark is a security label with holographic properties, displaying serial numbers (written and in form of a QR code) and a security strip. Control marks are affixed to legitimate copies of protected works and their security strip is destroyed when they are removed.

15. The use of control marks is an effective enforcement instrument to distinguish between legal and pirated copies of copyright-protected works. They are also highly instrumental in identifying right holders through their serial numbers.

C. THE CERTIFICATION SYSTEM

16. Any premises and venues engaged in the recording, reproduction, import, distribution, sale or rental of intellectual and artistic works are subject to certification by the Ministry of Culture and Tourism in accordance with the applicable Regulation. Examples of such premises include, amongst other, recording studios, printing houses, publishing houses or movie theatres.

17. The certification system also contributes to obtaining statistical data on the industry in addition to facilitating the inspection of businesses operating in this field.

D. THE AUTOMATION SYSTEM TEHAKSİS

18. The above-mentioned three systems are implemented by the DGC via its automation system TEHAKSİS. The information retrieved from this system is shared with the relevant government units to accelerate the prosecution and adjudication of IP cases as well as to generate statistical data.

IV. THE COORDINATED IMPLEMENTATION OF THE BANDEROLE SYSTEM THROUGH PROVINCIAL INSPECTION COMMISSIONS

19. The Provincial Inspection Commissions play a significant role in investigating copyright infringements regarding banderole crimes and initiating the trial process, by performing *ex officio* inspections to determine any pirated materials.

20. The Provincial Inspection Commissions were set up in the 81 provinces to perform inspections as to whether copies of copyright protected works that are legally required to do so actually carry control marks. These Commissions are composed of representatives of law enforcement authorities, staff of the Provincial Directorates of Culture and Tourism and collective management societies. Where an infringement regarding banderole crimes is determined during these inspections, the Commissions seize and dispatch all articles to the prosecution with an official report signed by the Commission members. Any person who uses duly obtained banderoles on other works shall be sentenced to imprisonment from one to five years and a judicial fine up to 1,500 days.

21. A Cooperation Protocol was signed between the Ministry of Culture and Tourism and the Turkish National Police on February 25, 2010, with the aim of fixing the principles of the inspections. Within this framework; training seminars on the applicable legislation as well as operation procedures are regularly organized with a view to increasing the efficiency of the Provincial Inspection Commissions and ensuring uniformity. Prosecutors and judges working in the field of IP serve as resource persons in such seminars.

	2011	2012	2013	2014	2015	2016
Number of Performed Operations	2.504	3.021	3.249	2.236	1.693	900

22. All inspection costs, including the expenses for the technical hardware and devices are borne by the Ministry of Culture and Tourism and bonuses proportional to the number of pirated materials seized are paid as incentives to the members of the Commissions.

23. Through several measures, it was possible to increase the technical infrastructure in the combat against piracy. To allow for rapid and effective inspections and the penetration of the roots of piracy, the Provincial Inspection Commissions have been equipped with QR code readers that detect the authenticity of intellectual and artistic works through the banderoles and enable access to rights management information. In addition, banderole security was tightened with a new “encrypted laser code system” piloted for the first time in 2015, when new banderoles and laser code readers were distributed to the 81 Provincial Inspection Commissions.

24. With a view to extending the anti-piracy inspections, a project for banderole inspection with smart phones has been initiated and a new software is currently being developed in order to help officials and concerned citizens detect improper or fraudulent banderole use through all iOS or Android based smart phones.

INTELLECTUAL PROPERTY ENFORCEMENT COORDINATION IN VIET NAM AND THE ROLE OF THE NATIONAL OFFICE OF INTELLECTUAL PROPERTY

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ABSTRACT

This document outlines recent developments in the coordination of intellectual property (IP) enforcement initiatives in Viet Nam within the context of the country's efforts to ensure compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The document introduces the role of the newly established National Steering Committee against Smuggling, Counterfeiting and Trade Fraud (National Steering Committee 389) and its contributions to protecting consumer rights and the business environment while promoting socio-economic development. Reference is made to further initiatives, such as the exchange of technical support, training and resources between the Intellectual Property Office of Viet Nam (NOIP) and various IP enforcement agencies. Through these mechanisms, the enforcement and protection of IP rights (IPRs) in Viet Nam has achieved significant progress toward creating a more favorable environment for IP.

I. INTRODUCTION

1. The intellectual property (IP) system in Viet Nam has recently undergone improvement. IP rights (IPRs) are adequately protected and the IP legal system is in line with international standards. Some 35,000 patents are granted every year out of a total of 60,000 applications, indicating the success of initiatives in Viet Nam in encouraging confidence in the IP system.
2. The biggest challenge for Viet Nam and other developing countries is how to ensure the IPR enforcement system operates as effectively as required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Specifically, Article 41.1 of the TRIPS Agreement imposes upon the members of the World Trade Organization (WTO) the general obligation to make available the enforcement procedures listed in the Agreement so as "to permit effective action against any act of infringements of IPRs".
3. By 2005, Viet Nam's IP law had established a comprehensive enforcement regime inclusive of civil, administrative, criminal, and border control enforcement measures relating to the IP related import and export of goods. However, unlike many other countries, IPR enforcement in Viet Nam is primarily practiced through the imposition of administrative penalties for IPR infringements whereas civil and criminal remedies are almost never used or used ineffectively. Against this background, the number of infringements has increased significantly while the capability of IPR enforcement authorities remains limited at both the central and the local level.

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

4. While the transition to a civil and criminal enforcement system seems infeasible in the years to come, to improve the situation in the short term it is necessary to strengthen the available administrative enforcement measures based on administrative punishments for IPR infringements.

5. There are two main practices utilized in tackling counterfeiting and piracy in Viet Nam, as will be outlined below.

II. DIRECT GOVERNMENT INVOLVEMENT IN ENSURING EFFECTIVE COORDINATION OF ENFORCEMENT FORCES AT THE CENTRAL AND THE LOCAL LEVEL

A. CENTRAL STEERING COMMITTEE 127

6. In 2001, the Central Steering Committee for Fighting Smuggling, Counterfeiting and Trade Fraud (Central Steering Committee 127) was established under the Prime Minister's Decision No. 127/2001/QĐ-TTg. Following this, additional local Steering Committees were established at the provincial level under the Decision of the People's Committee Chairman in order to form a coherent system of Steering Committees fighting smuggling, counterfeiting and trade fraud in the country¹.

7. Central Steering Committee 127 assisted the Prime Minister in directing and organizing coordination among ministries and other Government branches, both at the central and local level, in the fight against smuggling, counterfeiting and trade fraud. Its function was thus one of coordinating activities rather than directly implementing IPR enforcement measures.

8. The work of Central Steering Committee 127 was mainly coordinated by the Ministry of Industry and Trade. The Chairman of the Committee was the Minister of Industry and Trade while the Standing Vice Chairman was the Deputy Minister in charge of the prevention and combat of smuggling, counterfeiting and trade fraud. The Committee's members were the Deputy Ministers of related ministries, namely the Ministry of Public Security; the Ministry of Defense; the Ministry of Finance; the Ministry of Science and Technology; the Ministry of Agriculture and Rural Development; the Ministry of Health; the Ministry of Culture, Sport and Tourism; the Ministry of Information and Communications; and the Government Office. This composition also confirms that the fight against smuggling, counterfeiting and trade fraud in Viet Nam is mainly rooted in administrative measures.

9. The members of Central Steering Committee 127 worked on a part-time basis, thus limiting the effectiveness of their efforts against smuggling, counterfeiting and trade fraud. Over the more than 12 years of its establishment, Central Steering Committee 127 organized many anti-counterfeiting and trade fraud activities. According to the official report, in the period between 2001 and 2012, functional forces examined more than 4.5 million cases, handling nearly 2.4 million violations, with the total state budget revenue from handled cases amounting to over 2 billion US dollars. Within these activities, however, the fight against counterfeit products has not been paid as much attention as expected. In fact, the number of IP enforcement cases among all kinds of cases at both the central and local level was rather modest compared to the amount of counterfeit products on the market.

¹ In Viet Nam, the term "counterfeit goods" comprises both goods bearing counterfeit marks or geographical indications as well as pirated goods (Article 213 of the Law No. 50/2005/QĐ11 of November 29, 2005, on Intellectual Property; available in WIPO Lex at <http://www.wipo.int/wipolex/en/details.jsp?id=12011>).

10. It can be seen that Central Steering Committee 127 achieved some results but in practice, its effectiveness and efficiency remained limited, especially given that the Market Surveillance Agency under the Ministry of Industry and Trade served as the Standing Agency of this Committee, with the responsibility of ensuring the operational conditions of Central Steering Committee and implementing the Committee's work based on its own staff and part-time officials and employees of the participating ministries. The number of violations detected and handled did not reflect the actual severity of the problem. The transportation, production and trade of counterfeit products is still a pressing matter and Viet Nam is facing many challenges in fighting counterfeit products.

11. There are many subjective and objective reasons leading to the above-mentioned situation. Most significant is a lack of awareness and understanding of the nature of the problem, both across sectors and localities, which affected the efficiency of the efforts to combat IP infringement. It was clear that the role of Central Steering Committee 127 needed to be recalibrated in order to meet the urgent demands of the fight against modern forms of smuggling, counterfeiting and trade fraud. The aim was to modify the Committee positively by, for example, changing its mindset and leadership, reforming its organizational structure to enhance efficiency and effectiveness, organizing capacity-building activities for the Committee, making available sufficient resources to assist the Government in fighting against smuggling, counterfeit products and trade fraud, and ensuring close coordination among ministries, local authorities, and functional forces.

B. NATIONAL STEERING COMMITTEE 389

12. Based on the above-mentioned considerations, the Prime Minister decided, on March 19, 2014, to replace Central Steering Committee 127 and establish the National Steering Committee against Smuggling, Counterfeiting and Trade Fraud (National Steering Committee 389).

a) Characteristic Features of National Steering Committee 389

13. National Steering Committee 389 is expected to strongly transform the fight against smuggling, counterfeiting and trade fraud in the country, particularly in the following directions:

- Government leaders will direct the operation of National Steering Committee 389, while the other members of the Steering Committee are leaders of related ministries and branches. The Chairman was Deputy Prime Minister Mr. Nguyen Xuan Phuc, who has now become Prime Minister. The current Chairman is the Standing Deputy Prime Minister Truong Hoa Binh. This organizational structure promotes anti-counterfeiting in particular from the central to the local level through the direct involvement of government leaders in the activities of the Committee.
- To enhance the effectiveness of the Committee's activities, it changed from being a Central Steering Committee to National Steering Committee for Smuggling, Counterfeiting and Trade Fraud. The Committee uses the seal of the Prime Minister for directing its operations.
- To coordinate the operation and ensure operating budget, the Committee's Standing Office is located within the Ministry of Finance.

- Steering Committees of ministries, branches, provinces and cities are organized to form a nationwide system of agencies that is subject to the direction and overall coordination of the National Steering Committee 389 through its Standing Office.
- The responsibilities of each member of National Steering Committee 389 are clearly specified. The members report to the Chairman and are responsible for fighting smuggling, counterfeiting and trade fraud in the field of their respective ministries and agencies and other tasks assigned by the Chairman. The members are the Minister of Finance, the Minister of Industry and Trade, and the Vice Ministers of other related ministries, namely the Ministry of Public Security, the Ministry of Defense, the Supreme People's Procuracy and the Government Inspectorate. They are each directly involved in handling violations, including those relating to counterfeit products.

b) The Tasks of National Steering Committee 389

14. To direct and coordinate activities related to the trade in counterfeit products is a task clearly defined as belonging to the National Steering Committee 389, as well as the Steering Committees of the ministries, branches, provinces and cities.

15. The main tasks of National Steering Committee 389 are:

- to develop a strategy and plans to tackle smuggling, counterfeiting and trade fraud;
- to direct, inspect, urge and guide ministries and localities in the fight against smuggling, counterfeiting and trade fraud;
- to direct the coordination among agencies and functional forces in detecting, fighting, stopping and handling serious acts of smuggling, counterfeiting and trade fraud as well as relevant organized crimes;
- to direct ministries, branches and localities to amend or supplement legal documents with a view to raising the effectiveness of their efforts against smuggling, counterfeiting and trade fraud or propose that competent authorities amend or supplement as appropriate;
- to establish inter-branch missions to investigate and tackle smuggling, counterfeiting and trade fraud;
- to periodically check the status of activities against smuggling, counterfeiting and trade fraud in certain key areas;
- to promote international cooperation in the fight against smuggling, trade fraud and counterfeiting;
- to propose commendations to collectives and individuals that record outstanding achievements in the fight against smuggling, trade fraud and counterfeiting;
- to directly handle collectives or individuals covering up, preserving, or helping to smuggle trade, trade fraud and counterfeit products;
- to conduct reviews and evaluate periodical and thematic work;
- to report to the Prime Minister; and

- to coordinate with Viet Nam Television and press agencies in developing programs and plans aimed at enhancing public awareness of the negative impact of smuggling, trade fraud and counterfeit products.

16. Thus, National Steering Committee 389 not only coordinates the activities of enforcement agencies but also directly establishes inter-branch missions to investigate and tackle serious acts of counterfeiting.

c) Positive Results of National Steering Committee 389

17. The substantive reforms have led to positive results in the fight against smuggling, trade fraud and counterfeiting, contributing to increasing budget revenues, protecting the business environment and consumers' rights and promoting socio-economic development. Smuggling, trade fraud, production and trade in counterfeit and low-quality goods are pressing issues of public interest, and IP infringements, alongside the trafficking of oil and petroleum, tobacco, wildlife products, wine and beer, fertilizer, drugs, functional foods and cosmetics, are major issues of concern for enforcement agencies.

18. In 2016, National Steering Committee 389 and the relevant Ministries directed functional forces at all levels to detect and handle 223,262 cases (an increase of 8.23 per cent compared to 2015). The revenue to the State budget resulting from the collection of fines for administrative violations, the sale of confiscated goods and the imposition of taxes following inspection and examination activities reached 22.5563 trillion Vietnamese dong (an increase of 59.23 per cent compared to 2015; about one billion US dollars). In total, 1,561 cases involving 1,863 perpetrators and violators were prosecuted. A significant amount of this data relates to counterfeit products.

III. TECHNICAL SUPPORT PROVIDED BY THE NATIONAL OFFICE OF INTELLECTUAL PROPERTY TO IPR ENFORCEMENT AGENCIES

19. The National Office of Intellectual Property of Viet Nam (NOIP) is engaged in various forms of IPR enforcement activities. These include:

- preparing periodical reports within the framework of National Steering Committee 389 and providing expert advice in cases involving the seizure and handling of counterfeit or IPR infringing goods;
- participating in meetings of the Anti-Trade Frauds and Consumer Protection Association;
- coordinating with the Inspectorate of Science and Technology to carry out specialized inspections in various establishments across provinces and cities on the implementation of legal provisions on the protected status of industrial property rights and other subject matter;
- coordinating with IPR enforcement agencies in training staff. NOIP regularly participates in the trainings of enforcement officers. For example, in 2014, NOIP organized, either on its own or in cooperation with partner organizations, 19 training courses for the staff of customs, the Market Surveillance Agencies, the Inspectorates, the provincial Departments of Science and Technology, and the Consumer Protection Association. Moreover, NOIP actively participates in nationwide conferences on IPR enforcement;

- providing expertise on IP related issues in order to support IP enforcement agencies. In 2015, NOIP provided 174 expert comments to the Economic Police, the Market Surveillance Agencies, the Departments of Science and Technology, and customs (an increase of 68 per cent compared to 2014). These comments related to trademarks (158), industrial designs (10), patents (five), and utility solutions (one)²; and
- providing databases and search tools to support IP enforcement agencies in handling counterfeit products.

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² Article 58(2) of the Law on Intellectual Property states: “Unless it is a common knowledge, an invention shall be protected by mode of grant of utility solution patent when it satisfies the following conditions: a/ Being novel; b/ Being susceptible of industrial application”.