



WORLD CUSTOMS ORGANIZATION

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Remarks by
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On behalf of Kunio Mikuriya, Secretary General of the WCO, and myself we want to thank the Mexican authorities and Interpol for the opportunity to address the opening session of the 5th Global Congress on Combating Counterfeiting and Piracy.

My remarks will focus on Customs competence in the area of IPR enforcement. I must admit I never expected to have to address this particular issue before this audience but developments concerning Customs IPR enforcement efforts over the past two years tell me that I should address the issue of Customs competence in IPR enforcement.

Cooperation, collaboration and coordination of anticounterfeiting enforcement actions are the means by which international organizations can best address the increasing concern over IPR violations. Customs, controls are the principle line of defence used by governments to protect their citizens from unsafe or dangerous consumer products moving through the international supply chain. This is particularly true when it comes to the issue of counterfeit goods that impact consumers' health and safety. Customs administrations are the single most effective enforcement tool governments have in the fight against IPR violations. To this end, the WCO is pleased to note that several recent international initiatives have focused on clarifying Customs enforcement authority. For instance, I note the prominent role seen for

Customs IPR enforcement in EU Council Resolution 253/01. In particular I note the EU call to:

- Make a survey of Customs law and evaluate the improvements needed to the legal framework to improve action against counterfeit products.

The WCO would offer its draft Model Customs IPR Legislation that was unanimously approved by our 176 Members states at our June 2006 Council Meeting as a response to this EU Resolution. This draft model legislation covers the treatment of counterfeit merchandise at importation, at exportation, in transit, in free zones and in warehouses. The WCO recognizes that nations that have signed the TRIPS Agreement are only required to deal with counterfeit merchandise at importation but the WCO also recognizes that every nation has the right, under its national legislation, to deal with counterfeit merchandise at exportation, in transit, in free zones and in warehouses even if that nation is a signatory to TRIPS.

While the largest IPR seizures are currently made at importation, when those seizures are traced back to their source, it is clear that even larger seizures could have been made when the goods were exported or in transit. Nations have pushed their borders out in order to more effectively fight terrorism and drug trafficking. If nations would apply the same methodology to international cargo at exportation, in transit and in free zones, it would increase the effectiveness of Customs border enforcement against IPR violations.

For Customs enforcement activity beyond importation, specific Customs authority to deal with counterfeiting and piracy whenever the goods are under Customs control is useful. While specific Customs authority for dealing with IPR violations at importation, exportation, transit, free zones and warehouses is useful, almost all cross border transactions concerning counterfeiting or piracy will involve either a concealment of or a false declaration concerning the merchandise. These are Customs offenses in and of themselves and can be prosecuted by Customs even if the particular Customs administration does not have specific authority vis-à-vis counterfeiting or piracy. Why is this so? Every nation has an absolute right to determine who and what crosses its national borders. This is a simple matter of national sovereignty and the instrument of this exercise of sovereign control is, and always has been Customs. Indeed, national legislation generally nominates Customs as the entity to enforce the laws and regulations of many other government departments at the border.

While some nations, whether TRIPS signatories or not, may want Customs to focus on IPR importation enforcement only, no nation can require another nation to focus solely on IPR importation enforcement. Why? It is again a matter of sovereignty. Whether a nation is or is not a signatory to TRIPS, the right to do IPR enforcement at export, in transit, in free zones or in warehouses is within the sole discretion of each nation.

I must add a note of caution. While some Customs administrations have been involved in IPR enforcement activities for over 30 years and the WCO itself has been involved in IPR enforcement activities for well over 25 years, in the past two years a number of countries have questioned the competence of Customs in IPR matters. This issue of Customs competence has been raised by some G20 countries. While the competence issue is usually raised in the context of Customs' authority to make infringement decisions, there is a subtext that questions Customs' authority, without specific legislative or regulatory authorization, to detain, control or seize cargo that may be infringing. This question was never raised by the G7/G8 but the G20 has eclipsed the G7/G8. While I understand that the number of Customs administrations with specific IPR border enforcement authority is limited, I would refer you to the point I raised earlier in my remarks that almost every incident concerning counterfeiting or piracy at a national border involves an unlawful act (concealment or false declaration) and therefore, there is an underlying Customs violation even if the Customs administration has no specific IPR border enforcement authority. In addition, as a matter of national sovereignty, most nations have designated their Customs administrations to enforce their national IPR legislation at the border.

The WCO is currently focusing on several core issues and priorities which can result in enhanced effectiveness of the efforts made by Customs in combating counterfeiting and piracy. These priorities include:

- Enhancing cooperation, collaboration and coordination among national authorities concerned with IPR enforcement at the border
- Setting up an international communication network for the rapid exchange of information on counterfeit products among appropriate entities

- Promoting increased and more efficient coordination between international institutions involved in combating counterfeiting and piracy
- Sharing of best practices in IPR border enforcement among national Customs administrations.
- Providing technical assistance and capacity building expertise in the field of IPR border enforcement to any WCO Member requesting such assistance.

The WCO has always been a strong advocate of Customs cooperation, collaboration and coordination with other national, regional and international governmental organizations that have border control responsibilities. The WCO has developed the Coordinated Border Management concept to ensure open and secure borders as a critical building block in our Customs in the 21st Century Initiative. Coordinated Border Management provides for proper national and international cooperation, collaboration and coordination among the various authorities involved in border control activities. Coordinated Border Management also provides for proper national and international cooperation, collaboration and coordination of the various authorities involved in border management to ensure that borders are managed with maximum effectiveness and efficiency.

On a national level, Customs administrations must work with their border partners in the national government to establish a “single window” to receive advance cargo information electronically, to distribute that electronic information to the relevant border control agencies in order to ensure the rapid release of legitimate cargo that has undergone a consistent and effective application of risk management regimes by all relevant border control agencies.

Due to the support the WCO received from its Members the WCO Data Model Version 3 was approved by the WCO Council in June this year and will be released in December 2009. The Government Cross Border Data Reference message that enables the multi agency submission of data, including through the use of a “single window”, was approved by UNCEFACT in July this year and work is underway to align the WCO Data Model Version 3 with the UNCEFACT Core Component Library over the coming months.

This is the first business to all government electronic messages developed specifically for the “single window” environment.

Customs should also make effective use of search technology and best practices in cargo examination when risk analysis indicates such further actions are appropriate.

The WCO actively promotes cooperation, collaboration and coordination among international organizations having IPR responsibilities including the WTO, WIPO, OECD, World Health Organization, Universal Postal Union, Interpol, the G8 and the G20. The WCO has engaged in joint IPR enforcement operations with Interpol and the UPU and we work with the WHO on the smuggling of counterfeit cigarettes.

In addition to these activities, the WCO promotes the sharing of best practices in IPR enforcement through its Enforcement Committee and Permanent Technical Committee meetings. The WCO has an extensive capacity building and training programme that explains and promotes Customs IPR border enforcement best practices. Private sector rights holders participate in our committee meetings and in our capacity building and training activities. The WCO also publishes an Annual IPR Report that analyzes Customs seizures of counterfeit merchandise.

For those Customs administrations that do not have the ability to communicate with other Customs administrations, the WCO has developed the Customs Enforcement Network Communication System or CEN COMM. CEN COMM is an internet based, secure; encrypted communication tool for Customs administrations and other appropriate entities to exchange information in real time.

However, there is a reality that we must all understand. Customs administrations worldwide face a trade facilitation trade security dilemma, on one hand there was, at least until the recent recession, the continuing growth in legitimate international trade, while on the other hand there is the illicit cross border movement of weapons of mass effect, drugs, counterfeit merchandise, dual use chemicals, small arms, nuclear material, undeclared merchandise, currency, cultural property, endangered species, pornography, trafficked human beings, hazardous waste, unsafe foodstuffs and dangerous consumer products. In addition, for 70% of our 176 Member states, Customs revenue provides a significant portion

of national income so revenue collection is often the most important job Customs performs for the nation it serves. So except for counterfeiting and piracy that impacts public health and safety, where does a Customs administration place anticounterfeiting enforcement in its list of priority missions given by the nation it serves. While Customs administrations stand ready to attack all forms of counterfeiting and piracy, it is a nation's government that will determine where those Customs border enforcement efforts are focused.
