

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Communication from Japan

The following communication, dated 31 May 2012, is being circulated at the request of the delegation of Japan. It provides an updated version of an earlier communication, dated 8 October 2007, circulated in document IP/C/W/501.

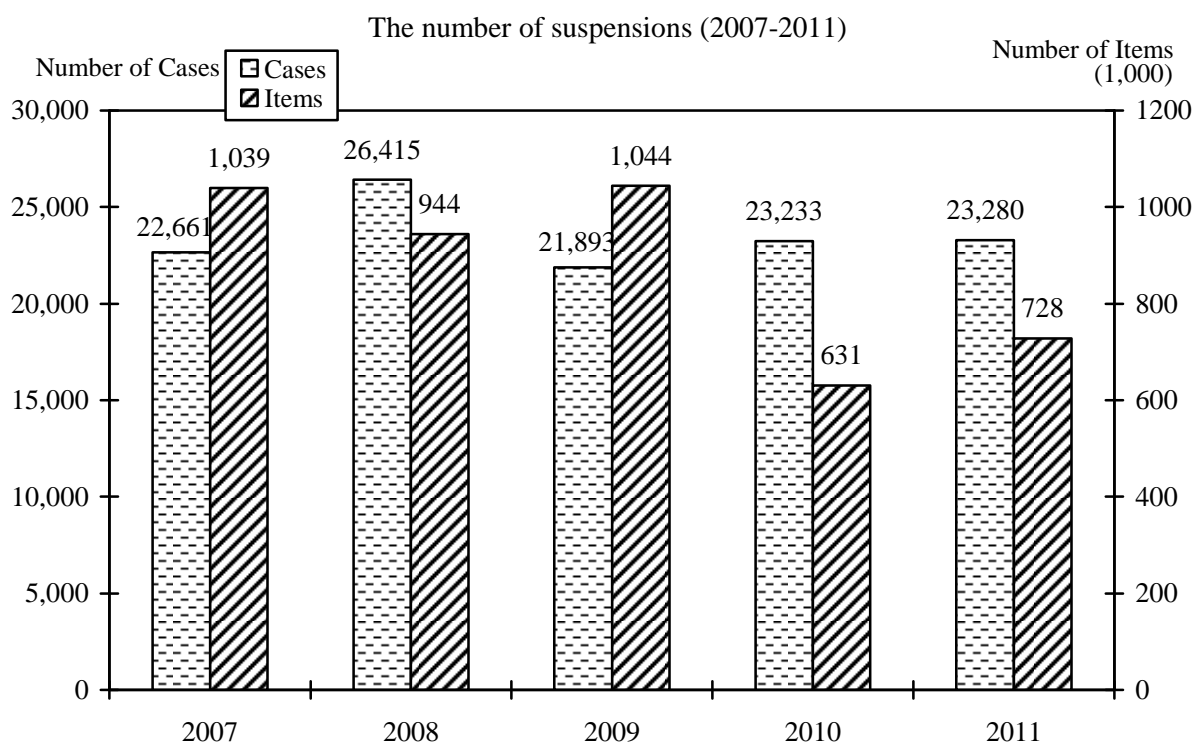
I. INTRODUCTION

1. We recall that for all customs authorities, IPR enforcement at the border has become a challenging and complicated issue. In this regard, customs authorities today are expected to play a vital role to combat global counterfeiting and piracy. Recognizing the importance of exchanging views, experiences and best practices with other Member countries, this paper aims to share our experiences of IPR enforcements at the border with other Members, introduce our recent trend on infringements and contribute to provide some insights into Members' border measures against counterfeits and pirated goods.

II. RECENT TREND ON CUSTOMS SEIZURES OF IPR INFRINGING GOODS AND PROBLEMS

2. In terms of import suspension of alleged infringing goods by Japan Customs, the number of cases remains more than 20,000 from 2007 to 2011. However, the number of items suspended at the border has gone down from 1,039,000 in 2007 to 728,000 in 2011. This would indicate the significant increase of small lots shipment of infringing goods while the situation of large shipment is still unclear.

3. In this trend, international postal shipment is the main transport method for suspended counterfeit and pirated goods. In fact, it accounts for more than 90 per cent in suspension cases and more than 40 per cent in suspended articles in Japan. This is partly because of the development of e-commerce. In order to exercise physical inspection on international postal shipment, Japan Customs is requested to allocate large number of human resources because they cannot obtain manifest data and entry data regarding postal shipment in advance.



The number of suspensions by type of cargo (2011)

	Cases		Articles	
General Cargo	1,389	(6.0%)	418,528	(57.5%)
Postal Items	21,891	(94.0%)	309,706	(42.5%)

4. In terms of the type of infringed rights, the infringement of trademark rights has occupied vast majority in Japan. In 2011, the number of cases of trademark infringement was 22,843. This number accounts for 97.5 per cent of suspensions recorded in 2011. In terms of the number of suspended items, Japan Customs suspended about 567,000 goods as trademark infringements in 2011 and it accounts for 77.9 per cent of the total. The number of copyright infringement is about 117,000, followed by design infringement the number of suspended items of which is about 26,000.

The number of suspensions by type of rights (2007-2011)

Type of rights		2007	2008	2009	2010	2011
Patent	Case	15	27	15	9	8
	Article	20,787	69,472	27,314	4,258	16,276
Utility model	Case	0	0	0	0	0
	Article	0	0	0	0	0

Type of rights		2007	2008	2009	2010	2011
Design	Case	54	80	88	56	88
	Article	90,040	91,472	81,270	49,266	26,304
Trademark	Case	22,447	26,140	21,415	22,994	22,843
	Article	877,895	685,529	768,534	519,274	567,107
Copyright and related right	Case	214	227	423	273	485
	Article	50,636	97,489	166,721	57,865	116,670
Plant breeder's right	Case	0	0	0	0	1
	Article	0	0	0	0	1,815
Goods violating Unfair Competition Prevention Law	Case	0	4	19	1	3
	Article	0	79	183	25	62

5. In terms of the type of commodity, Japan Customs has suspended a large number of fake brand name products specifically dominated by bags or apparels. Pharmaceuticals which are considered to be threats to human's health and safety also constitute a large number of the suspended items over the past five years.

The number of suspension by type of commodity (2007-2011)

【case】

	2007	2008	2009	2010	2011	share
Bags	16,959	19,793	15,288	15,681	14,441	51.0%
Apparel	2,656	2,178	2,409	2,576	3,125	11.0%
Footwear	1,151	1,071	1,120	1,818	2,403	8.5%
Key cases	2,476	2,853	2,309	2,125	1,620	5.7%
Watches	1,699	2,477	1,858	1,724	1,450	5.1%
Belts	883	1,097	1,294	1,204	1,153	4.1%
Accessories	379	337	334	459	625	2.2%
Mobile-phones and accessories	289	471	454	482	563	2.0%
Eyewear and accessories	148	224	352	450	488	1.7%
Pharmaceuticals	102	501	669	520	456	1.6%

【item】

	2007	2008	2009	2010	2011	share
Footwear	48,325	51,504	25,908	165,943	136,940	18.8%
Accessories	36,510	25,636	79,668	84,216	84,858	11.7%
Apparel	80,915	81,288	112,193	44,825	77,460	10.6%
Bags	259,377	140,560	71,947	46,415	54,015	7.4%
Pharmaceuticals	96,591	94,684	84,672	40,285	53,154	7.3%
House wares	-	-	28,387	21,773	39,695	5.5%
Headgear	22,892	15,718	23,202	37,163	29,476	4.0%
Mobile-phones and accessories	20,939	26,730	14,729	10,838	28,080	3.9%
Accessories of apparel	102,358	132,810	64,878	47,874	17,302	2.4%
Computer accessories	4,797	40,780	14,369	17,680	13,661	1.9%

III. COUNTERMEASURES AGAINST SMUGGLING DISGUISED AS PERSONAL USE

6. Japan Customs considers that a number of people have tried to import counterfeit and pirated goods by disguising them as personal use items and it accelerates the recent trend of small-lots in IPR enforcement at the border. In order to tackle this smuggling disguised as personal use items, we have strengthened our enforcement on small-lots cargos. In principle, Japan customs initiates enforcement exercises regardless of the number of items involved. Due to this tightened enforcement, we have successfully suspended lots of counterfeits at the overseas mail sub-branches.

7. In addition, Japan has strengthened institutional capacity to meet the increasing number of counterfeits sent by international postal shipment. Japan Customs has several overseas mail sub-branches and IPR specialized teams have been formed in key branches. For example, the Tokyo Overseas Mail Sub-branch office which deals with about 10,000 cases per year have eleven IPR specialized officers in 2012.

IV. IMPROVEMENT OF CUSTOMS OFFICERS' EXPERTISE

A. CUSTOMS INTELLIGENT DATABASE SYSTEM AND INTRANET BULLETIN BOARD SYSTEM

8. Japan Customs has put emphasis on the information analysis to suspend counterfeits and pirated goods more effectively. In this regard, Japan Customs recognizes that the enhancement of information exchange with other customs authorities is vital. Right holders also provide Japan Customs with useful information of suspicious import or export goods, which makes Customs enforcement more efficient and effective, by lodging applications for suspension. Moreover, Japan Customs holds training seminars with right holders in order to properly understand the information provided by right holders. Front-line staff members can acquire pragmatic knowledge and techniques to distinguish genuine goods from "elaborate counterfeit goods" through these cooperative training seminars.

9. For effective analysis and sharing of the information, the Japan Customs is utilizing two different information systems. Firstly, Japan Customs has developed the Customs Intelligent

Database System (CIS) since 1991 to analyse various types of information related to customs operations including the import/export of goods infringing IPR. When a front-line staff member suspects that cargos may include counterfeits or pirated goods, the staff member can access the CIS to ascertain the risk level of the cargos using the accumulated information of the CIS.

10. Secondly, an Intranet bulletin board system that specializes in IPR enforcement is playing a key role to share information. While the CIS is based on both the past records and advance information, the Intranet bulletin board system places emphasis on raising the precaution and awareness levels of front-line staff members by providing all the Customs staff members who are in charge of examination of import/export declarations and cargos with up-to-date and useful information such as:

- list of applications for suspension;
- explanation of each application for suspension with a brief description of distinguishing features between genuine goods and infringing goods;
- reports of recent methods or deceptive practices; and
- explanations of enforcement procedures on IPR.

11. Since IPR border enforcement is very complex and requires staff members to gather all necessary information on a timely basis, this bulletin board system is effective in supporting front-line staff members' efforts to implement effective and appropriate IPR enforcement.

B. HUMAN RESOURCE DEVELOPMENT

12. Japan Customs has the Customs Training Institute (CTI) for the development of human resources of the Customs. The CTI provides the Customs staff with various technical knowledge including IPR. Nine regional CTI branches also provide the front-line staff members with more practical training programmes. The details of training about IPR border enforcement in the CTI are as follows:

(1) Intensive training programme specialized in IPR enforcement

Since 2004, the CTI provides intensive training programmes designed for IPR specialists every year. The participants usually have experience in working for IPR enforcement sections. The programme consists of two parts including legal studies and practical trainings. Regarding the legal studies, the participants learn the intellectual property laws (Patent Act, Utility-model Act, Trademark Act, Industrial design Act, Copyright Act, Unfair Competition Prevention Act and Plant Variety Protection and Seed Act). Judicial precedents and recent trend of intellectual property laws are also provided in the programme. The lecturers of legal issues are invited from other governmental agencies relevant to IPR-related international agreements and laws (the Ministry of Foreign Affairs, the Ministry of Agriculture, Forestry and Fisheries, the Japan Patent Office, the Agency for Cultural Affairs, the Ministry of Trade, Economic and Industry) and law firms. Practical trainings are conducted by experienced Customs IPR specialists and right-holders. Through these programmes, the participants learn the legal framework of border measures on IPR enforcement and important points from pragmatic viewpoints. In order for the participants to acquire the knowledge in a better way, case studies are provided in the end of the programmes.

(2) General Training Programme

The CTI provides general training programmes which are not focused on a specific area. There are programmes targeted at different job classes, such as the newly-employed, middle or senior class staff members. These programmes include the IPR border enforcement in

general. In Japan, in order to develop experts of IPR, the Customs officers dealing with IPR issues participate in a training session of IPR in the CTI. About 400 customs officers have been joining in specific training programmes related to IPR as an outsourced programme.

13. Japan Customs is consolidating knowledge and skills regarding IPR enforcement to the IPR National Center physically located in Tokyo Customs. The IPR National Center has a central role for coordination on IPR issues for all regional Customs in Japan and arranges On-The-Job-Training (OJT) programmes. There are two main OJT programmes. The first one is a short-term OJT which is designed for those Customs staff members working at regional Customs to take a two-week intensive OJT and to experience actual cases. The staff members also learn the practical issues from IPR investigators in IPR National Center. The IPR National Center usually accepts three or four young staff members to the short-term OJT every year. The other type of OJT is a long-term OJT which takes a whole year. The staff members are selected from all regional Customs. They are expected to become the core members of IPR enforcement in each regional Customs. The number of the staff member is two. They will work with the staff members of the IPR National Center in Tokyo Customs in the same way.

V. CONCLUSION

14. We reaffirm that for all customs authorities, IPR enforcement at the border is one of the most challenging/complicated issues. As described above, Japan Customs has strengthened enforcement in several ways, fully recognizing the importance of a flexible and well-balanced enforcement system to address the problem of counterfeits and pirated goods.
