

## Question Q

208

**National Group:** [please insert name of Group]

**Title:** **Border Measures and other means of Customs Intervention against Infringers**

**Contributors:** [please insert names of contributors]

**Datum:** [please insert date]]

### I. Analysis of current law and case law

The Groups are invited to answer the following questions under their national laws:

1. Do the laws of your country provide for border measures? If so, what is the legal basis?
2. Do the laws of your country provide for other measures of customs intervention against infringers? If so, which ones and what is the legal basis?
3. Are border measures and other measures of customs intervention against (collectively referred to as “border measures”) only available for pirated copyright and counterfeit trademark goods or also for goods infringing other IP rights? If so, for which types of IP rights are border measures available? Are border measures in particular available for goods infringing patents, plant variety rights, common law marks, unregistered design rights, or geographic indications? Is actual registration of the IP rights required or is an application to register sufficient? Does unfair competition, passing off or the like give rise to border measures?
4. Are border measures available for parallel imported goods?  
Are border measures available for goods contained in a travellers’ private luggage?  
Are there any other goods excluded by your border measures legislation?
5. Who is entitled to file an application for customs action?  
Is there a centralised system for managing multiple applications for customs action through a single contact point?  
What are the conditions for border measures? In particular, what level of evidence for alleged infringement and other information is required by customs authorities regarding the application for customs action? To which extent are customs authorities willing to receive training by the right holder?  
Do customs authorities generally require the provision of a security to protect the owner, holder or importer of the allegedly infringing goods? If so, will such security depend on the type of IP rights?  
May the customs authorities take ex officio measures? If so, what is the practical relevance of ex officio action in your country? Are customs authorities liable in case of wrongful ex officio detention?
6. Are customs authorities properly equipped to identify goods which infringe patents, plant variety rights, common law marks, unregistered design rights, geographic indications or the like?

7. Is only the right-holder or also the owner, holder or importer of the allegedly infringing goods notified once the customs authorities detain goods? How can the alleged infringer obtain information about the status of border measures and what information is provided by customs authorities to the alleged infringer?
8. What happens after notification? Briefly describe the procedure following notification. Is the inspection of the allegedly infringing goods following notification usually carried out by the right holder or by an expert?  
Does your border measures legislation provide for a simplified procedure allowing the destruction of the goods without there being any need to determine whether IP rights have been infringed? If so, in which cases? Are samples of the goods preserved for evidence purposes?  
If proceedings must be issued to determine whether the goods infringe IP rights, are both civil and criminal proceedings available to determine infringement? What are the advantages and disadvantages of the respective proceedings?  
What is the impact of a nullity action seeking to invalidate IP rights on the application for customs action?  
May customs authorities release goods suspected of infringing IP rights on provision of a security by the owner, holder or importer of such goods? If so, will such release depend on the type of IP rights?
9. If goods are found to infringe IP rights, may a right holder oppose
  - exportation of infringing goods from your country;
  - infringing goods in transit;
  - placement of infringing goods in a free trade zone or free trade warehouse?
10. If goods are found to infringe IP rights, do the judicial or customs authorities of your country generally order the destruction of the goods or do they have the authority to dispose of the goods outside commercial channels (e.g. to charity)?  
May the competent authorities also order the infringer to give the names of his accomplices, upstream or downstream in the channels of production and distribution?
11. May judicial or customs authorities order the applicant to pay the owner, holder or importer of goods appropriate compensation for any injury caused by wrongful detention? What is considered appropriate compensation and does it include attorney fees or other expenses?

## **II. Proposals for adoption of uniform rules**

The Groups are invited to put forward proposals for adoption of uniform rules regarding border measures and other measures of customs intervention against infringers. More specifically, the Groups are invited to answer the following questions:

1. Do you think that the adoption of uniform rules and best practice of customs authorities in the area of border measures and better coordination between countries and at an international level are desirable to improve enforcement?
2. What should the scope of border measures be? Do you think that border measures should be available also for goods infringing IP rights for which your national law currently does not provide border measures? If so, which IP rights? Should unfair competition give rise to border measures? Which goods should be excluded by border measures legislation?
3. What rules should apply in relation to the lodging and processing of applications for customs action? Should there be a centralised system for managing multiple applications for customs action through a single contact point?

Should there be uniform rules on the provision of information by the applicant? What should the required level of evidence for alleged infringement be?

Should there be uniform rules on the provision of information by the customs authorities?

4. What rules should apply in relation to the procedure following notification?  
Should there be a simplified procedure allowing the destruction of the goods without there being any need to determine whether IP rights have been infringed?  
Should there be uniform rules on the examination of the goods by the right holder, security and compensation in the case of wrongful detention of goods and disposal of infringing goods?

National Groups are invited to comment on any additional issue concerning border measures and other measures of customs intervention which they find relevant.

It will be helpful and appreciated if Groups follow the order of the questions in their Reports and use the questions and numbers for each answer.