

# **The Global Congress/World Customs Organization Regional Forum on Protection of Intellectual Property Rights**

**Shanghai, People's Republic of China  
22 & 23 November 2004**

## **The Shanghai Initiative (FINAL)**

### **PREAMBLE**

The Global Congress / World Customs Organization (WCO) Regional Forum on Protection of Intellectual Property Rights (IPR) was held in Shanghai, China from the 22<sup>nd</sup> to 23<sup>rd</sup> of November 2004. The participating international representatives invited by the WCO and the General Administration of Customs of People's Republic of China carried out a thorough discussion on the impact of counterfeiting and piracy, countermeasures employed, the constraints and development of IPR protection, and enforcement cooperation between Customs, other agencies and the private sector.

### **WHEREAS**

1. As noted in the Outcomes Statement from the First Global Congress on Combating Counterfeiting and the Rome Declaration from the International Conference in Italy – the trade in counterfeits is a large and growing problem and requires governments at all levels to place a higher priority against it.
2. Widespread concern has been expressed regarding:
  - The negative social and economic impacts of counterfeiting and the demonstrated linkages with international organized crime groups;
  - The fact that many counterfeit products endanger the health, safety and security of consumers;
  - The potential for corruption emanating from the trade in counterfeit products;
3. The governments of the Asia/Pacific region, their agencies and private sector partners have identified counterfeiting as a major problem causing significant harm to national and business interests through the loss of tax and company revenues, diversion of government resources, higher costs for law enforcement and negative impacts on economic development, employment and investment;

## **NOTING THE FOLLOWING FACTORS**

1. The governments and customs administrations in the Asia-Pacific region have increased their attention on IPR protection and their cooperation with business resulting in improvements in combating the trade in counterfeit goods.
2. The economy in the Asia-Pacific region is growing rapidly and has become one of the most vigorous economies in the world. Maintaining this favourable environment is one of the most important responsibilities of governments, their agencies and departments.
3. With globalization, counterfeiting and piracy have become a major concern. The establishment and optimization of effective IPR legal protection and enforcement systems will play a significant and unique role in promoting social wealth and economic development.
4. IPR border protection is one of the most important Customs' responsibilities. In the framework of the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs), customs in many countries are striving to establish and improve a more complete legal framework and enforcement system for IPR border protection. They are intensifying enforcement capabilities and improving the effectiveness of customs enforcement.
5. Customs and the private sector have the same goals and aspirations regarding IPR border protection. The effective customs-business cooperation in the areas of information exchange, training, and legal proceeding coordination plays an important role in facilitating IPR border protection.
6. The initiative of the World Customs Organization IPR Strategic Group in establishing an Asia Pacific Secretariat to co-ordinate efforts to assist Customs administrations improve their capacity to implement effective border measures against IPR crime; and to further enhance the partnership between rights holders, customs administrations and other competent national agencies throughout the Region.
7. A number of countries and regions have announced anti-counterfeit initiatives, the most recent being the European Commission which, in November 2004, adopted a strategy for the enforcement of intellectual property rights (IPR) in third countries. The EC action plan focuses on vigorous and effective implementation and enforcement of existing IPR laws and providing technical cooperation and assistance to help third countries fight counterfeiting. The Commission will foster awareness raising of consumers in third countries and support the creation of public-private partnerships for enforcement.
8. Encouraging progress has been made at the First Global Congress on Combating Counterfeiting in Brussels, the International Conference in Rome, Italy and the Regional Forum in Shanghai in raising awareness of the counterfeit issue but there remains a strong need to engage all governments at the political and policy-maker levels on the issue;

9. The Global Congress Steering Committee has been established to improve levels of cooperation among international authorities and the private sector, and now must urgently develop the recommendations from Brussels, Rome and Shanghai into priorities and concrete action plans;
10. The World Customs Organization is planning to enhance its anti-counterfeit capabilities by broadening its capacity building programs and targeting counterfeit products under its security and facilitation initiative to secure the international supply chain;
11. Interpol has formally established an Intellectual Property Crimes Unit and is about to launch its pilot project in South America;
12. The World Intellectual Property Organization is enhancing its efforts to convince governments of the need for effective enforcement systems and the benefits of entrusting judges with special experience in dealing with intellectual property cases;
13. The private sector has made progress in identifying mechanisms to quantify the size and extent of the global counterfeit problem and its impacts on consumer health and safety and the growth of organized crime networks.

## **CONCLUDES**

That the Global Congress/WCO Asia Pacific Regional Forum on the Protection of Intellectual Property Rights provided an important venue for customs administrations from the Asia/Pacific region and global representatives from the public and private sectors to enhance cooperation and identify areas for improving synergy and action. In doing so, they built upon the recommendations arising from the First Global Congress on Combating Counterfeiting and the subsequent International Conference in Rome. All participating Asia Pacific countries considered the protection of IP rights as key to economic development and agreed to continue to enhance their efforts to make IP enforcement more effective.

## **AND RECOMMENDS<sup>1</sup>**

### **Asia-Pacific Countries:**

#### **Legislation and Procedures:**

1. Improving understanding at the political and policy-making level of the serious consequences of the counterfeiting trade and the vital role that enforcement authorities in the region can play in fighting IP crime.
2. Encouraging countries to modernize their Customs legislation on border measures for IP protection, taking into account the WCO Model Law (published on the website [www.wcoipr.org](http://www.wcoipr.org)) to further enhance anti-counterfeit capabilities, specifically by:
  - Reducing or eliminating the requirement for IP owners to pay bonds for

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<sup>1</sup> The recommendations contained in the Shanghai Initiative are in addition to, or enhancements of, the recommendations in the Brussels Global Congress Outcomes Statement and the Rome Declaration.

- counterfeiting cases;
  - Facilitating further simplification of procedures for obtaining court orders;
  - Empowering customs officials to conduct in-depth investigations into counterfeiting and piracy cases;
3. Encouraging Customs-with the assistance of right owners where appropriate-to transfer more cases to the police and other competent authorities for investigation and criminal prosecutions.
  4. Implementing protection for industrial products design and patents for inventions similar to the protection currently offered for trademarks.

### **Risk Analysis, Information Sharing and Communication**

5. Establishing channels for strengthening exchange of information between the customs administrations of the Asia-Pacific region and other foreign customs administrations to effectively share information concerning the infringing trade in counterfeit goods.
6. Expanding and promoting understanding, information-sharing and cooperation between customs, other enforcement agencies and the private sector to effectively facilitate combating IPR abuses;
7. Establishing a regular regional IPR forum to ensure that the relationship between business, customs and other enforcement authorities continues to develop;
8. Enhancing the role of the WCO Regional Intelligence Liaison Office (RILO) in the Asia/Pacific region to include coordinating customs information and intelligence gathering on counterfeiting and piracy and providing regular analyses and reports;
9. Designing protocols on the exchange of IPR information between customs authorities and rights holders and vice versa;

### **Capacity Building**

10. Providing advanced communication tools to customs to facilitate investigations;
11. Intensifying enforcement capabilities and sanctions particularly with respect to the enormous illegal profits and relatively low risk costs associated with the counterfeiting and piracy trade;
12. Developing a comprehensive programme of IPR technical assistance and capacity building for enforcement authorities including the exploration of funding sources;
13. Conducting a WCO exercise in the Asia-Pacific region to identify and intercept counterfeit and pirate products in containers. The WCO will

manage the arrangements for sharing information via the Customs Enforcement Network;

**Internationally:**

14. Conducting a meeting of embassy attachés in Brussels as a means of exploring opportunities to increase political and policy-maker awareness of the serious consequences of the trade in counterfeit products;
15. Developing the WCO's e-learning program on counterfeiting to provide national customs administrations with the latest strategies and knowledge on combating the illegal trade;
16. Sharing the results, as appropriate, of Interpol's intellectual property crimes exercise, Operation Jupiter, in South America and identifying other potential countries where Operation Jupiter could be run;
17. Increasing the number of activities of the World Intellectual Property Organization to facilitate the exchange of information between law enforcement agencies and to render advice and assistance to Governments on the protection and enforcement of intellectual property rights including by developing and making use of practical training scenarios;
18. Securing private and public sector financial support for the OECD to finalize its plans to conduct an extensive research project on the global counterfeit trade;
19. Establishing a study group to investigate and recommend how enforcement authorities and business can best harness the new inspection and security technologies to improve IPR border control capabilities;

**NOTING AND ENCOURAGING**

20. Plans to conduct a private sector summit in 2005 to identify anti-counterfeit alignment strategies with public sector administrations and agencies;
21. The initiative of the WCO IPR Strategic Group in establishing a 2005 IPR technical assistance programme in Asia Pacific including the holding of a national WCO IPR Seminar in Vietnam on 18/19 January, the planning of further seminars in India and Pakistan for later in 2005 and their intention to undertake a pilot IPR programme with Royal Malaysian Customs using WCO capacity building methodologies.
22. The staging of a Global Congress regional event in Brazil in May, 2005;
23. Plans for the Second Global Congress on Combating Counterfeiting in the Fall, 2005;
24. Plans of WIPO to hold a high-level meeting and a number of workshops and similar events in Asia and the Pacific and other regions to raise awareness and

provide training to the judiciary and law enforcement officials, and to focus on education and awareness-raising as the main theme of the next session of the WIPO Advisory Committee on Enforcement.