

# Export Controls

## Role of Customs.

I am here today to discuss or make a presentation on a simple yet complex issue of the Customs role on import and Exports. I have met quite a number of people here who have expressed surprise on the involvement of customs on pharmaceutical products and in particular . our relation with the very interesting subject of IPR.

As you may well be aware Customs in most cases is the first government agency you get into contact with in case of importation and the last when exporting. This therefore means that the actions or in-abilities of Customs administrations affects each one of us in one way or another.

Customs Administrations the world over, therefore play a vital role in the growth of International trade and the development of the global market place. The efficiency and effectiveness of Customs procedures will also therefore significantly influence the economic competitiveness of nations.

In a highly competitive environment, International trade and investment will generally flow toward efficient, supportive and facilitative locations while at the same time ebbing away from locations perceived as bureaucratic and synonymous with high costs.

Customs therefore must not be allowed to serve or be perceived as a barrier to International trade and growth. Chief among its principals is the commitment of administrations to provide transparency and predictability for all those involved in aspects of international trade while at the same time co-operating with other relevant authorities and trade communities in implementing appropriate international standards.

This therefore involves the application of simple yet efficient procedures to give the maximum level of facilitation of goods on the one hand and passengers on the other.

Modern Customs administrations should implement:

- standard yet simplified procedures
- Continuous development and improvement of control techniques
- Maximum use of information technology and automated systems
- A partnership approach between Customs and trade
- coordinated interventions with other agencies
- risk management techniques ( including risk assessment and selectivity of controls)
- the use of pre-arrival information to drive programmes of selectivity
- make information on customs requirements, laws, rules and regulations easily available to everyone
- and to provide a system of appeals in Customs matters.

## **Customs and IPR**

Perhaps the most important responsibility for Customs over the years has been viewed as the collection of import revenues for Government. However, as import duties are being progressively reduced, customs role in protecting society, enforcing trade rules and contributing to a fair and equitable international marketplace is growing in prominence.

Customs, situated as they are at land and air frontiers, are the obvious choice as the main Government agency to protect the external frontiers.

A broad range of contravention's and challenges confront the Customs official of today. Such offences include the trafficking of, illicit drugs, endangered species, nuclear and hazardous goods and also goods which are being imported, transited, or exported, whilst contravening Intellectual Property Rights (IPR) legislation.

Interestingly the public perception of IPR offences is generally that of fake watches, perfume etc the actual range of products being counterfeited is more extensive and in many instances pose a serious health and safety risk to the public and can be extremely damaging to individual companies and in turn national economies,.

Cases including pharmaceutical products and prescription drugs, which have been manufactured with sub-standard constituents have been discovered; others include cigarettes, alcohol and other beverages, motor vehicle parts, aircraft spares, computer processors ..... the list is almost endless. This examples are a graphic reminder of how dangerous counterfeiting can be, especially if these products are left to enter the market freely.

## Effects of IPR offences to Economies

For national economies, in the long term, counterfeiting causes serious economic damage, especially in terms of attracting inward investment.

Manufacturers, distributors and other traders are all the time looking for fair trading situations, where their products and brands are adequately protected from unfair competition.

The degree therefore to which Governments act to create a fair trading environment for these markets is crucial.

Customs, therefore play an important and legitimate role in providing a valid control against intellectual property rights violations. (*Section 4 of the TRIPS agreement describes the future role and responsibility for Customs Services in IPR enforcement*).

By supporting the viability of legitimate trade, respective economies are able to prosper and their public protected against sub standard and often hazardous goods.

In this regard the world Customs Organization has developed an Intellectual Property rights programme as a joint venture with International business in order to improve the efficiency and effectiveness of Customs Administrations in IPR among its members.

*WCO stated future Priority:  
" our priority for the future will be to build upon our understanding and co-operation with our business partners and facilitate sustainable improvement in Customs efficiency and effectiveness in IPR enforcement among our affected Members "*

It is also worthwhile to note at this point of the development by the World Customs Organization ( WCO ) of a global intelligence network with ten regional representation extending to most of its 150 + members, known as RILO ( Regional Intelligence Liaison Office ) . This is an information, analysis and communications system for the fight against customs offences.

The RILO performs a variety of analytical tasks including;

1. Risk assessments,
2. Identification of new or special smuggling trends, whether for legal or illegal goods
3. Methods of concealment
4. Modi operandi and other items of interest.
5. Collects, assesses and disseminates details of successful conclusion of significant seizures resulting from information exchanged between member countries now standing at over 13,000 cases from July 2000.

6. Prepares and publishes regularly periodic /ad hoc analytical bulletins & situation reports of regional trends and other reports.
7. Conducts research/studies on Customs issues of interest
8. Receives, develops & disseminates alert messages as appropriate and serves as a regional focal point for Customs Intelligence information to Member administrations & other regional enforcement agencies
9. Develops and conducts inter regional target oriented projects to identify new transborder smuggling threats & trends
10. Promotes and maintain regional co-operation with other law enforcement agencies or organizations.
11. Provides technical & other assistance where necessary or appropriate.

The network is supported by what is known as the Customs Enforcement network (CEN)

CEN is a system with many functions:

1. Database of Customs Seizures and Offences including Illicit drugs, precursors, Commercial fraud/Tax evasions, weapons and explosives, currency, Nuclear and other hazardous material, CITES, Pornography and in your case Intellectual Property Rights Violations with a strong analytical component
2. Web site for the information and Intelligence needs of Customs services
3. Communications network to facilitate international exchanges and contacts

4. Uses modern technology for reliable secure and inexpensive operation
5. Uses effective data base protection ( i.e allows access to authorized users only and also uses an encryption technology to protect communications and data transfers.)

### **RE-Exports of Pharmaceuticals.**

Exports of all types of goods have traditionally been effected to the extent to which they are restricted and or prohibited. I am however unable to find any prohibition on Kenyan Laws for example over re-exports of Pharmaceutical products.

Most Administrations in Africa for example had no need to put in place stringent laws regulating the exportation of Pharmaceutical products. This was principally due to the fact that few had the capacity to manufacture these products ( as most were and still are importing ) – and perhaps more importantly exports of other goods were/are encouraged as a source of foreign exchange earnings

A number of administrations are now putting into legislation export requirements for the so called Essential goods.

Past experience of practical ways of restricting re-imports/exports of goods destined for particular markets has seen industry working together with Government iat National levels which has proved very effective in many instances.

However Control of small quantities of high value goods as those carried on a person or in accompanied baggage is generally hard to regulate in an environment where customs is required to facilitate a fast flow of human traffic.

It is important in my opinion that the pharmaceutical industry continues to –initiate and encourage partnerships with national administrations in

sub-saharan Africa in order that their voices are heard while policy and other legislative decisions are made.

–Assist administrations in improving their enforcement capabilities in the global movement of illegal/Counterfeit pharmaceutical products.

Thank you.

**J.K.Bisonga**  
**Customs and Excise Department**  
**Kenya**