

ACTION PLAN CONCERNING EU-CHINA CUSTOMS

COOPERATION ON IPR (2014-2017)

The European Commission (EC), together with the Member States of the European Union, and the General Administration of Customs of the People's Republic of China (GACC);

CONSIDERING

- The importance of promoting legitimate trade between the EU and China for the mutual benefit of both parties;
- The negative economic and social consequences of violations of intellectual property rights and the need to properly address this problem through the entire supply chain;
- The experience gained from the Action Plan concerning EU-China Customs Cooperation on IPR since 2009 and the positive feedback received from stakeholders.

TAKING INTO ACCOUNT

- The “Strategic Framework for Customs Cooperation 2014-2017 – Ensuring smooth and safe trade between the EU and China”, which establishes common objectives and actions, including on IPR enforcement, for EU-China customs cooperation.

RECOGNIZING

- The key role of customs in preventing the international trade in IPR infringing goods;
- The close cooperation established under the framework of the Action Plan concerning EU-China Customs Cooperation on IPR since 2009;
- That joint customs enforcement efforts to combat the trade of IPR infringing goods is more effective if cooperation is structured with clear actions.

RECALLING

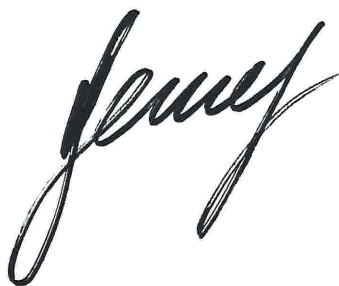
The strong interest that both sides expressed in strengthening this cooperation at the 6th EU-China Joint Customs Cooperation Committee in June 2012 by means of a new Action Plan concerning EU-China Customs Cooperation on IPR.

HEREBY

Endorse this Action Plan envisaged for the period until 31 December 2017 with a view to strengthening cooperation in respect of customs enforcement of IPR.

Signed in Beijing on May 16th 2014, in two original copies, in English and Chinese languages.

For the European Commission

A handwritten signature in black ink, appearing to be 'J. Juncker', written in a cursive style.

For the General Administration of
Customs of People's Republic
of China

A handwritten signature in black ink, consisting of the Chinese characters '于滨洲' (Yu Binzhou) written in a cursive style.

I. INTRODUCTION

The 1st Action Plan concerning EU-China Customs Cooperation on IPR was signed in Brussels on 30 January 2009 with the aim of strengthening customs enforcement to combat counterfeiting and piracy in the trade between both parties. In this context, both sides have taken concrete steps to develop close cooperation. Following an initial evaluation in December 2010, it was agreed to extend the Action Plan until the end of 2012.

At the 6th meeting of the EU-China Joint Customs Cooperation Committee (JCCC) on 25 June 2012 agreement was reached to continue the cooperation under a new Action Plan. This new Action Plan takes due account of the agreed joint evaluation of the 1st Action Plan. Particular focus is given to:

- Better exploiting the available information on IPR detention and seizure data for trend and risk analysis.
- Enhance targeting of high risk consignments by improved information exchange on all relevant cases within the network of key airports, seaports and other customs control points.
- Enhance mutual administrative assistance mechanisms, including on investigations.
- Facilitate cross-border cooperation between Customs and other enforcement authorities.
- Set up specific activities to enhance the cooperation with right-holders in deterring cross-border IPR infringement.
- Improve knowledge and experience of each other's IPR enforcement policies and practices.

The Action Plan proceeds from the “Strategic Framework for Customs Cooperation 2014-2017 – Ensuring smooth and safe trade between the EU and China”, where objectives and actions, including on IPR enforcement, have been commonly envisaged.

II. GENERAL APPROACH

Customs oversee international trade and have a direct responsibility to prevent illicit goods from entering or leaving their respective territories. In the case of goods suspected of infringing IPR, this involves the targeting and detention of those goods.

In order to increase the efficiency and effectiveness of IPR enforcement, European and Chinese customs authorities systematically share information on detentions, seizures, trends and other risk information. Additionally, a network of front-line officers from the main ports in the EU and China has been established allowing for direct and easy interaction and cooperation on IPR enforcement. These ports include different transportation modes of goods, be it

maritime cargo, air cargo or smaller consignments such as express courier and post parcels.

The prevention of trade in IPR infringing goods requires not only action from customs but also calls for enhanced collaboration with other enforcement authorities both at national and international level. In full respect of article 17 §2 on the protection of personal data of the Agreement between the European Community and the People's Republic of China on cooperation and mutual administrative assistance in customs matters, adequate information is envisaged to be forwarded to the other enforcement authorities to allow them to disrupt distribution networks, sales and stop production. Additionally, cross-border cooperation between customs and other law enforcement agencies in the EU and China also needs to be strengthened.

The involvement of right holders in these actions is equally important. It serves firstly to enable right holders to understand how to best protect their rights. Secondly, right holders are able to offer support, via training and provision of information, to assist customs to target controls to maximum effect.

III. KEY ACTIONS

Key Action 1 – Joint analysis of seizure statistics to detect general trends and risks

Both sides should send each other on a quarterly basis seizure statistics on shipments suspected of violating IPR. Every year, a group of risk management experts of both sides, specialised in IPR, should carry out a joint analysis of these statistics and of any other relevant information with a view to detecting general trends and risk information.

This should lead to better targeting of high risk consignments and an optimal allocation of resources to those ports and routes with the highest incidence of IPR related detentions. It should also contribute to the optimal selection of ports participating in Key Action 2. The results of this joint analysis should be implemented via operational activities to tackle the identified risks.

Evaluation criteria:

- Statistics of detentions exchanged in time and according to agreed parameters
- Joint analysis carried at least on an annual basis but preferably more frequent
- Quantity and quality of detected general trends and risks
- Feedback on controls based on detected trends and risks

Key Action 2 – Target high risk consignments in key ports via ***A. Direct exchange of case-specific information on detentions*** ***B. Regular newsletter exchanges with general risk information***

European and Chinese customs participating in a network of key ports should send each other 'real time' information on significant detentions. This would require the systematic exchange of all relevant cases by both sides, possibly via a specially developed IT system, to ensure successful targeting.

Additionally, if available, general risk information should be exchanged to support efficient targeting. This information flow should take place through the IT system used for the exchange of case-specific data on detentions and/or by any other useful means, as for instance by the regular exchange of newsletters through the network.

Both sides cooperate to develop a sustainable IT solution taking into account the IT developments under the EU and China Strategic Framework for Customs Cooperation.

Evaluation criteria:

- Quality of the information exchange mechanism (cross-border and internal)
- Quantity and quality of the exchange of case-specific information (cross-border and internal)
- Feedback of follow-up detentions and operations

Key Action 3 - Promote cooperation between customs and other law enforcement agencies and authorities in order to stop production and wind up distribution networks

Stopping goods at borders does not in itself provide a long-term solution to address the problem of international trade in IPR infringing goods. Customs controls should be combined with activities to stop and disrupt the production and distribution of goods infringing IPR. Customs should therefore pass on useful, agreed and well defined information to other authorities and agencies responsible for enforcing IPR, in order to enable those authorities and agencies to take the necessary action to stop production and to disrupt distribution networks.

Therefore, both sides intend to share experiences, discuss working arrangements and practices relating to the strengthening of cooperation between customs and other relevant authorities and agencies in charge of the enforcement of IPR - such as the police and the judiciary - within their respective jurisdiction and cross border.

Evaluation criteria:

- Effective sharing of experiences, working arrangements and practices
- Number of cases for which European and Chinese customs authorities exchanged operational information and those cases that result in investigations.

Key Action 4 - Joint development of partnerships with the business communities in the EU and China

Strengthening cooperation between the EU and China to combat infringements of IPR requires adequate cooperation between administrations and right-holders. The aim is to strengthen existing cooperation between the public and private sectors, both in the EU and China.

Customs should give right-holders all relevant information on applicable legislation and initiatives; right holders should inform customs on their initiatives and provide customs with all relevant information to improve their ability to effectively enforce IPR.

A Joint Customs-Industry Meeting could be held together with the Working Group meeting, at least once per year and ensure the coherence and continuity of the activities in this area. Specific attention should be given to communicating the results of this meeting to all relevant stakeholders in the EU and China in particular Small and Medium Sized companies (SME's). Cooperation with the IPR Helpdesk or other organisations should be considered so as to ensure right-holders are properly informed about their rights and obligations. Both sides encourage the right-holders to actively apply for customs detention and provide customs with their IPR information.

Evaluation criteria:

- Better targeted controls resulting from information exchange
- Joint Communication activities carried out
- Improvement and increase of right-holders' application
- Feedback from right-holders and number of requests handled by the SME helpdesks

Key Action 5 – Exchange of knowledge and experience of each other's IPR enforcement policies and practices.

Customs experts on IPR enforcement of the EU and China should be given the possibility to understand better each other's practices and approaches and the enforcement challenges customs faces at a practical level. For this purpose, working visits and 'on-the-job' exchanges to each other's ports and other relevant offices should be organised. The exchanges are envisaged by the Agreement between the EU and China on cooperation and mutual administrative assistance in customs matters.

Evaluation criteria:

- Number of visits carried out
- Feedback from participants and hosting administrations
- New initiatives originating from the visits

IV. IMPLEMENTATION, FINANCING AND EVALUATION

This Action Plan should be carried out by the European Commission (EC) and customs administrations of the EU Member States and the General Administration of Customs of the People's Republic of China (GACC).

A Working Group should oversee the operation of this Action Plan. Each side should appoint a co-chair and inform the other side of the name, job title, department and contact information. The composition of the Working Group can differ according to topics to be discussed. It should hold at least one meeting per year alternately in the EU and in China.

The Working Group should draft an annual Working Plan and should report to the JCCC via the EU-China JCCC Steering Group as appropriate.

Other law enforcement agencies in the EU and China or international organisations relevant to the implementation of this Action Plan, in particular in relation to Key Action 3, can be invited to participate in the activities of this Action Plan.

Both sides finance the expenses that they incur because of their participation in the operation of this Action Plan. However, other financing might be sought where possible from the 'IP Key Project' or any other programmes.

This Action Plan is intended to run until 31 December 2017. Before the end of 2015 the Working Group should carry out a Mid-Term Review possibly entailing recommendations for improvements resulting from experience gained during the implementation.

A final evaluation report will be prepared by the EC and the GACC to the JCCC at an appropriate time.

This Action Plan is not intended to create any binding rights or obligations under international law.