

ARTICLES

Enforcement of Intellectual Property Rights at Custom Checkpoints: An Analysis of Various Jurisdictions

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Abstract

The vitals of modern economic growth is dependent on fair and free trade. Any economic and fiscal improvement requires wide and rampant foreign investment and in absence of any credible and concrete law for the protection of invention, trade secrets, patent or for that matter the trademark/ brand, the scheme of foreign investment cannot be successful, which in turn jeopardizes the national, economic, social and scientific growth. Border customs agencies world over are an important arm of governments that play a vital role in the protection of Intellectual Property ("IP") rights. The research looks into the Indian framework for the protection of Intellectual Property Rights ("IPR") at custom checkpoints i.e. Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. It also analyzes the processes in different jurisdictions to judge whether they are better equipped to deal with piracy. The shortcomings of the Indian law are ascertained and suggestions are made for better enforcement.

Introduction

Intellectual Property¹ plays an indispensable role in commercializing a product by increasing its economic value. The said value is often subject to misappropriation in the illicit trade activities, by means of copying and bringing in counterfeit and pirated products. These goods or services cause loss of jobs and also, loss to the business.² The issue of counterfeiting and piracy can be addressed by companies investing in Research and Development ("R&D"). Additionally, the concerned state can strengthen intellectual property enforcement measures at borders. The pirated products that are imported and exported have a great effect on the nation's economic growth and at the same time are reflective of the reputation of a country. Therefore, we

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¹ Garima Budhiraja Arya & Tania Sebastian, 'Exhaustion of Rights and Parallel Imports with Special Reference to Intellectual Property Laws in India', vol. 2, no. 1, *Journal of National Law University Delhi*, 2014, pp 26-53 available at <https://doi.org/10.1177%2F2277401720140102>, accessed on 15 March 2019.

² National Academy of Customs, Indirect Tax and Narcotics, 'Enforcement of Intellectual Property Rights at Border', 21 February 2016, *National Academy of Customs, Indirect Tax and Narcotics, Zonal Campus, Kanpur* available at https://www.nacnkanpur.gov.in/mysiteadmin/media_images/Enforcement%20of%20IPRs%20at%20Border%20Book%20No.02.pdf, accessed on 27 March 2019.

need to keep a track of such pirated products. The customs authorities are required to maintain a proper balance between facilitating trade and industry on the one hand and protecting the economic and external interests of the country and its citizens on the other.³

Further, any counterfeiting strikes deep at the entrepreneurial spirit of a right-holder by weakening the benefits to the innovator.⁴ Border Customs agencies world over are important arms of governments that play vital roles in the protection of IP rights. The IPR rules introduced by the Indian Customs are called the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*. These rules bring together features of IPR registration, enforcement, interdiction, determination and disposal processes and also include references to relevant laws, rules and circulars issued by the apex body governing these rules which is called the Central Board of Excise and Customs, the CBEC (w.e.f. 1st July, 2018 this Body has been renamed as "Central Board of Indirect Taxes and Customs" ("CBIC")).⁵

With the growth in the economy, the prosperity of the citizens increases along with the desire to use the best product and articles available in the contemporary international market. This desire has been capitalized upon by the introduction of counterfeit goods which has harmed the economy of the country. Various reports and analyses including that of the World Customs Organization suggest that piracy and business loss due to counterfeit are rising. The fast and hassle-free import and export in quick time has made it rather easier to indulge in such illicit trade practices.⁶ Generally, the term "counterfeit" is used with reference to "trademark infringement" and "piracy for infringement of copyrights."⁷ It simply means, 'to imitate something with the intention to practice deception.'⁸

The Government of India, as a custodian of various treaties and conventions, is obliged to provide a legal framework for the protection of IPRs and thus it has introduced several Acts relating to IPRs. Amendments have been made on several occasions to line up the law with India's commitment towards Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") agreement and other treaties under the World Intellectual Property Organization "WIPO" and World Trade Organization "WTO".⁹ TRIPS was brought under the umbrella of WTO on 1 January 1995 after the Uruguay

³ National Academy of Customs, Indirect Tax and Narcotics, 'Study Report on Export Control System in India and Role of Customs Officers', *National Academy of Customs, Indirect Tax and Narcotics* available at https://www.nacencanpur.gov.in/mysiteadmin/media_images/5476e06e4bd9117.pdf, accessed on 27 March 2019.

⁴ National Academy of Customs, Indirect Tax and Narcotics (n 2).

⁵ National Academy of Customs, Indirect Tax and Narcotics (n 3).

⁶ Frontier Economics Ltd, 'The Economic Impacts of Counterfeiting and Piracy', *International Chamber of Commerce* available at <https://iccwbo.org/content/uploads/sites/3/2017/02/ICC-BASCAP-Frontier-report-2016.pdf>, accessed on 27 March 2019.

⁷ Pratistha Sinha, 'India: Recourse against Counterfeiting', 24 November 2017, *Mondaq* available at <https://www.mondaq.com/india/Intellectual-Property/649674/Recourse-Against-Counterfeiting>, accessed on 27 March 2019.

⁸ Tara J. Radin & Ozgur Toraman, 'Piracy of Intellectual Property', *Encyclopedia of Business Ethics and Society*, *Sage Knowledge* available at <https://sk.sagepub.com/reference/ethics/n619.xml>, accessed on 27 March 2019.

⁹ See Vincent Chiappetta, 'The Desirability of Agreeing to Disagree: The WTO, TRIPS, International IPR exhaustion and a Few Other Things', vol. 21, no. 3, *Michigan Journal of International Law*, 2000, p. 333; The creator of intellectual property may hold a set of national IPRs covering the same IP in a variety of jurisdictions.

Rounds of General Agreement on Tariff and Trade ("GATT"). Articles 51 to 60 of TRIPS agreement read with Article 46 of the same it provides for border measures required to be undertaken to grant IPR protection at the border against infringement.¹⁰ Articles 51 to 60 of the TRIPS Agreement provide that a WTO member country is under an obligation to legislate the appropriate law for the effective enforcement of various IPRs enumerated in the said document. The compulsory obligations provided under the Articles 51 to 60 of the TRIPS agreement pertaining to "border measures" are subject to 'trademark and copyright infringements' only.¹¹

Indian Legal framework for the protection of IPR

Before looking into the implementation part of IPR by the Indian Customs, we need to discuss the types of IPRs that need to be protected.¹² The Trade Marks Act (1999 Act) is the most common and recognized law among IPRs when it comes to combating counterfeit goods. Violation of trademark is the most visible sign of a breach of IPR and it can be easily detected on the goods without much expertise.¹³ Most of the executive staff at Customs port, such as the Inspectors and the Superintendents are candidly not well versed in the nitty-gritty of the modern technologies which enable them to identify the counterfeit in the field of Patent or Software, etc.¹⁴ There appear three-pronged action available in counterfeit and falsification.

- (a) The court: which examines the facts in the light of the 1999 Act and as per the proviso to Section 103 - the court decides the punishment.
- (b) The Police: can directly be approached for violation of Sections 103,104 & Section 105 of Trademark Act, as envisaged in Section 115 of the Act.
- (c) The executive action: including seizure and destruction of goods under the Customs Act, 1962.

While the first remedy is widely known and accepted, the second proposition i.e. any action by police is up to a large extent not free from doubts. The police officials have

¹⁰ The international law on copyright, patent and trademark does not exist. Some guidelines have been provided for the members under different treaties. But protection can be granted by the respective members beyond the guidelines stipulated in the treaties. Each member has to provide certain basic minimum protection prescribed by the TRIPS. The minimum standard provides for the subject matter that is to be protected; rights that can be conferred; and the minimum time period for such protection.

¹¹ Surinder Kaur Verma, 'Exhaustion of Intellectual Property Rights and Free Trade- Article 6 of the TRIPS Agreement', *International Review of Intellectual Property and Competition Law*, 1998 available at <https://www.econbiz.de/Record/exhaustion-of-intellectual-property-rights-and-free-trade-article-6-of-the-trips-agreement-verma-surinder-kaur/10001249344>, accessed on 20 June, 2019.

¹² IPRs viz., trademark, copyright and patents are regarded as the 'negative rights'. These IPRs generally give an exclusive right to the holder of the right to exclude others from the market. A patent owner protects his right by way of prohibiting or excluding others to make or use his invention. In case of copyright, the author does not allow others to reproduce or distribute his expressive work. Similarly, a trademark gives a right to the owner of a business preventing others from making use of his distinctive mark commercially.

¹³ Irene G. R. Moses, 'The Law and Practice under the Trade Marks Act, 1940', 2 November 1946, *Nature* available at <https://doi.org/10.1038/158604a0>, accessed on 15 March 2019.

¹⁴ Sharad D. Abhyanker & Nikhilesh N Panchal, 'Concept of Trademarks under the Trademarks Act, 1999 and the protection of domain names under the Indian Law', 11 July 2001, *IFLR* available at <https://www.iflr.com/Article/2027427/Concept-of-trade-mark-under-the-Trade-Marks-Act-1999-and-the-protection-of-domain-names-under-Indian.html>, accessed on 27 March 2019.

the authority to investigate without prior permission of the court.¹⁵ The proposition of whether the police can initiate the action without first approaching the court is debatable. The *Tata Tea Ltd. case* is one of the landmark cases in this aspect. A complaint was filed by the company (complainant/respondent) against some unknown persons. The allegation was that the company's mark 'Tata Tea' had been falsely applied and that it was a registered mark since 1988. A raid was conducted by the police and FIR was registered. The investigation was conducted by the police followed by the filing of the charge sheet. However, the proceedings conducted by the police were vitiated by the Additional Chief Metropolitan Magistrate on account of failure on the part of police officials to seek prior permission of the court before conducting the investigation. As a result, the petitioner was discharged of all the allegations made in the FIR raising the vital question of law as to whether the police have a right to *suo-moto* initiate an action even when such remedy is provided by the statute dealing with trademark law.¹⁶

A petition was filed in the case of *Anil Kumar v. State of Punjab & others* in the High Court of Punjab & Haryana¹⁷, intending to quash an FIR lodged seeking action against the selling of fake shoes and *chappals* (slippers) imitating established brands like Adidas and Reebok at the original price. The petition was disposed of by quashing the FIR by the Court in view of Section 115 of the 1999 Act postulating the powers of a police officer for search and seizure. Hence, the proceedings were vitiated. The word 'shall' in the proviso is an indication of the fact that the provision is indeed mandatory. Moreover, an officer not below the rank of Deputy Superintendent of Police could have investigated the said offences. Thus, the cases fell on the above grounds. Besides the Courts and the Police, the third scenario is when the goods are imported and suspected to be counterfeit at the border i.e. ports.¹⁸

Copyright has the widest implications among the IPRs because with the advent of the internet and other media of communication, creativity, as well as its breach, has touched a new high. Though the Information Technology Act, 2000 ("IT Act") was passed, the provisions mainly dealt with hacking of computer source documents and crimes related to piracy of personal data and national security. With an aim to keeping pace with the developments, an amended Act of 1994 was passed to amend the Copyright Act of 1957. The Act provides both the remedies viz., civil and criminal that can be availed simultaneously as they are distinct and independent of each other.¹⁹ Detection and actions on other rights under the umbrella of IPR are not very frequent by the Customs.²⁰

¹⁵ Vijay Pal Dalmia, 'India: IPR & Criminal Remedies in India: Civil vs. Criminal Remedy in IPR: Search, Seizure & Raids By Police', 19 November 2015, *Mondaq* available at <https://www.mondaq.com/india/Intellectual-Property/444510/IPR-Criminal-Remedies-In-India-Civil-vs-Criminal-Remedy-In-IPR-Search-Seizure-Raids-By-Police>, accessed on 25 March 2019.

¹⁶ *Rajesh Garg v. Tata Tea Ltd and ors.* (2011) 123 DRJ 186.

¹⁷ *Anil Kumar v. State of Punjab & others* in High Court of Punjab & Haryana No. 2012 (51) PTC 159 (P&H), available at <https://vlex.in/vid/anil-kumar-vs-state-545983370>, accessed on 13 March 2019.

¹⁸ Radhika Shukla, 'Trademark Infringement and Remedies', *Legal Service India* available at <http://www.legalserviceindia.com/article/1740/Trademark-Infringement-and-Remedies.html>, accessed on 20 March 2019.

¹⁹ Mahendra Kumar Sunkar, 'Copyright Law in India', *Legal Service India* available at <http://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html>, accessed on 27 March 2019.

²⁰ FICCI Knowledge Paper Series, *Federation of Indian Chambers of Commerce and Industry* available at <http://fikki.in/ficci-Knowledge-Paper-series.asp>, accessed on 20 March 2019.

IPR enforcement at Indian customs

The legal provisions in India are a mix of statute, subordinate legislation and executive orders in the form of Acts, Notifications and Circulars respectively.

Section 11(2)(u) of the 1962 Act provides for the protection of copyrights, trademarks and patents by the Central Government. It may issue notification under Section 11(1) whereby the import or export of specified description of goods can be subject to prohibition. Goods that are listed under S 111(a) to (p) of the 1962 Act are liable to be confiscated as Improperly Imported Goods. S 112 of the Customs Act, 1962 provides for penalty up to Rs. Five thousand. Section 113 of the Customs Act, 1962 deals with the confiscation of goods with certain anomalies as marked under Clause (a) to (l) in the case of export.

Certain notifications and circulars can explain it better. Notification No. 135/1960 dtd 31.12.1960 prohibited the export of counterfeit goods through sea and land and attracted the violations listed in Section 78 and Section 117 of the Trade and Merchandise Marks Act, 1958. Notification no 1/64 dtd 18-1-64 prohibited import of goods infringing trademarks and designs under the Trade and Merchandise Marks Act 1958 and Indian Patents and Designs Act, 1911 respectively. By Notification No.47/2007 dtd 08.05.2007, the government prescribed the complete code of IPR scheme implemented by Customs at borders. Notification No.49/2007 dtd 08.05.2007 enumerated the provisions of the parent Acts of different IPRs, the violation of which should lead to the prohibition of import of such goods. Notification No.50/2007 dtd 08.05.2007, which superseded the earlier Notification No. 135/1960-Customs dtd 31.12.1960 and Notification no. 1/64 dtd 18-1-64, prohibited the export of goods which contravened certain provisions of 1999 Act.²¹ Circular No. 41/2007 dtd 29.10.2007 replaced Notification no. 1/64 dtd 18-1-64 and as per this Circular, other IPRs were also included. Paragraph 4 of this Circular stated that extreme cautions must be taken while dealing with IPRs other than Trademark and Copyright and in the case of three other IPRs, prior judicial announcements are needed to be followed. It provides a detailed procedure for the effective enforcement of IPRs at the border/port by the Customs in the following manner.²² Notification No.51/2010 dtd 30.06.2010 superseded Notification 49/2007 dtd 08.05.2007 and prohibited the import of goods intended for sale or use in India which contravene the specified provisions of Trade Marks Act, 1999; the Designs Act, 2000; the Patents Act, 1970; the Geographical Indications of Goods (Registration and Protection) Act, 1999 or the Copyright Act, 1957. Circular No.13/2012-dtd 08.05.2012 clarified the position with respect to the import of original/genuine products which are not counterfeit called parallel import and directed the officers to follow the legal position enshrined in the parent Acts of respective IPRs on this issue. The parallel import from the genuine source was allowed vide this Circular.²³ The

²¹ Vinod Khurana et al., 'Trademark Filing/Portfolio', *Khurana and Khurana Advocates and IP Attorneys* available at <https://www.khuranaandkhurana.com/ip-protection-and-portfolio-management/trade-mark-portfolio/>, accessed on 20 March 2019.

²² 'India IPR Custom & Border Protection', *Altacit Global Attorneys-at-Law* available at <https://www.altacit.com/publication/india-ipr-customs-border-protection/>, accessed on 20 March 2019.

²³ Frank Muller-Langer, 'Creating R&D Incentives for Medicines for Neglected Diseases', 2009, *Springer Science and Business Media LLC* available at <https://link.springer.com/content/pdf/bfm%3A978-3-8349-8323-7%2F1.pdf>, accessed on 20 March 2019.

doctrine of de-minimus is applied by the Indian Customs and accordingly goods (though maybe termed as counterfeit) of noncommercial nature and meant for personal usage may be allowed.²⁴

Case study of Ram Kumar

In the year 2008, the Patent Office of Chennai granted patent number 214388 to Mr. Soma Sundaran Ram Kumar on a 'Mobile telephone with a plurality of SIM cards allocated to different communication networks'. Under Rule 3 of IPR Rules, 2007, before the Officer of Commissioner of Customs, Mr. Ram Kumar sought for the enforcement of patent rights against various importers. Royalty was paid by the small importers to Ram Kumar to get their consignments released. But the big corporate bodies, such as Samsung and Hansum did not agree to make the payment. These corporate bodies challenged the claim made by Ram Kumar. The constitutional validity of the rules was challenged of violating Article 14 of the Constitution of India.

Secondly, a restraining order had been sought by Ram Kumar against the manufacturer Samsung. The *ex-parte* injunction was granted by the High Court of Madras against the manufacturer restraining them from producing and selling in India the infringing mobiles.

Thirdly, the Commissioner of Mumbai Customs passed an order favoring Samsung and the Chennai Customs passed an order favoring Hansum.²⁵ The claim made by Mr. Ram Kumar was held to be vexatious since the goods in question were covered by previous art declared by him and it did not amount to the infringement of a patent that was granted to him. Likewise, the Assistant Commissioner of New Delhi Customs established that the said claim of Mr. Ram Kumar was vexatious.²⁶ He was even ordered to pay the warehousing and demurrage charges. The High Court of Madras issued *an ex-parte* stay order against all these orders passed by the respective customs authorities. The petition was finally dismissed by the Court.²⁷

International Practices

Australia

The responsibility of administering the laws incorporated under the Copyright Act, 1968 and the Trade Marks Act, 1995 legislated by the Australian Parliament rests with

²⁴ In the case of *Deepak M. Sarvajya versus CC (Airport), Mumbai*, the passenger opted for the green channel. However, three suitcases and one shopping bag were detained in the warehouse and dutiable goods consisting of 945 pieces of recorded compact discs, 2100 blank compact discs and 125 pieces of Ram SIM modules, cigarettes, liquor, etc. were recovered from the baggage. The protection under baggage rules is available only for *bona fide* baggage within permissible limits and not otherwise. Recorded compact discs valued at Rs. 1, 41,450/- were found to be pirated and violative of the provision of the Copyright Act, so the same were destroyed. So while *de minimis* import for personal use is allowed, but no commercial activities are permitted. The case was reported in Excise Law Times vide 2006 (206) ELT 0633 (Tri.-Mumbai).

²⁵ The adjudication order is available to departmental officers only.

²⁶ Shamnad Basheer, "Ram Kumar Patent Case: New Delhi Customs favours Samsung, Loses Before Indian Customs Authority", available at <https://spicyip.com/search/ram+kumar+patent+case>, accessed on 20 March 2019.

²⁷ Aditya Gupta, 'Border Enforcement of Intellectual Property Rights in India: Recent Developments', vol. 1, no. 2, *Trade, Law and Development*, 2009, p. 192.

the Australian Customs.²⁸ The provisions of their laws on IPR are in alignment with the WTO Agreement on the TRIPS. Australian Customs have the authority to confine the goods that are found to be infringing.²⁹ The task of pursuing civil action against the offender, however, is undertaken by the Intellectual Property Rights holder. The 'Notice of Objection Scheme' has been launched by the Australian Customs. It is administered by their head office which is located in Canberra. The task of this team is to ensure that the valid applications are filed for the 'Notices of Objection' and also create awareness. It is the primary duty of the trademark and copyright owners to adopt measures for protecting their rights.

The notice of objection must be placed before the Australian Customs by the owner or the authorized user for seeking protection of their trademarks, or copyright materials from being forged, pirated, or unauthorized importation. This notice is the basic requirement before the goods infringing the Trade Marks Act 1995 and the Copyright Act 1968 which can be seized by the Australian Customs. This is one of the most essential legal documents empowering the Australian Customs to confiscate the infringing goods imported found to be *prima facie* violating trademarks or copyright. After this, the Objector is to be notified about the holding of the goods. They are given ten working days for starting a civil action against the importer, subject to a further extension of another ten working days after approval of the Chief Executive Officer of the Australian Customs. In case of non-initiating the civil proceedings, the goods are released to the importer.

It is pertinent to mention that the period of validity of the notice of objection is two years. There is a provision for re-lodging of these Notices to ensure that protection can be continued. In the case where the Notice is not required anymore, the owner has the option to withdraw the same, any time. For trademarks and copyright, separate Notices are required. Besides the above, the Australian Customs, acting through an Inter-departmental Committee on IP Enforcement, also participates actively in expansion of IPRs protection and policy. As a member of the said Committee, various agencies of the government are actively involved and participate in the enforcement of IPR Representation. A body named 'Intellectual Property Enforcement Consultative Group' forges links of Australian Customs with industry.³⁰ This forum facilitates industry inputs into IPR enforcement policies and also provides the perspective of the industry on the issues of enforcement. It is thus seen that there are several similarities between Australian and Indian law on IPR at borders. However, one point of difference in the two countries lies in the fact that the Indian Customs can take cognizance of infringing goods on their own whereas in Australia it is not the case.

²⁸ 'IP Infringement', *Australian Government, IP Australia*, available at <https://www.ipaustralia.gov.au/ip-infringement>, accessed on 20 March 2019.

²⁹ Min Li, 'Improving Australian border enforcement of IPR by referring to the Chinese experience', vol. 8, no. 2, *World Customs Journal*, pp. 39-46.

³⁰ 'Counterfeiting and Piracy', *Australia Government, IP Australia* available at <https://www.ipaustralia.gov.au/ip-infringement/more-about-ip-infringement/counterfeiting-and-piracy>, accessed on 20 March 2019.

Canada

There is no legal authority provided to the Canada Border Services Agency ("CBSA") officers in their Customs Act, for the enforcement of either the Trademarks Act or the Copyright Act.³¹ Customs Act in Canada has authorized officers to seize goods only if goods in question are subject to prohibition, control, or being regulated; and there is a violation of customs, such as non-declaration of goods. The CBSA comes in action and detains the goods only when it is supplied with specific intelligence or comes across during the administration of the Customs Act. To investigate such cases, the 'Royal Canadian Mounted Police' ("RCMP") is called upon.³² The prosecution process, thus, is dependent heavily on the interest and involvement of the RCMP. The CBSA is now running its operations with inter-departmental partners for exploring the alternatives to take care of the emerging issues due to import of forged products that are unsafe; revenue losses and the involvement of organized offence. Thus, it is seen that there is little similarity between the Canadian border measures and the Indian law which is much robust in nature and in accordance with the TRIPS provisions.³³

China

The China Customs protects the patents, copyrights, trademarks and related rights at borders. The Regulations were enacted in January 2004 under the provisions of the Chinese Customs Law of January 2001. To comply with the WTO Agreement on TRIPS, the Rules for implementing the aforesaid Regulations were also introduced in the year 2004.³⁴ IPR enforcement mechanism of China Customs comprises of three layers, viz., 'The General Administration of China Customs' ("GACC"); 'Customs Districts' and 'Customs Houses'. As per the law, IPR enforcement is done in two modes, viz., the ex-officio enforcement and the enforcement done under filing of an application.³⁵ Upon application from right holders, China Customs is authorized to detain the infringing goods. In the event of enforcement which is done pursuant to filing of an application, China Customs releases the suspected infringing goods if no civil proceedings are initiated within twenty working days from the date of detention. In ex-officio enforcement, recording or registering of rights by the right holders with the GACC is an essential prerequisite. At the level of the GACC, a 'Centralized IPR Recordation System' ("CIPRS") exists. An electronic application form must be filed through the CIPRS by the right holders in addition to paper documents. If subsequent to registration, goods suspected of infringing IPRs in respect of which the registration

³¹ Canadian Intellectual Property Office, Government of Canada, available at <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/home>, accessed on 18 March 2019.

³² William R. Morrison, 'Showing the Flag: The Mounted Police and Canadian Sovereignty in the North', vol. 92, no. 3, *The American Historical Review*, 1985, pp. 1894-1925.

³³ Brian P. Isaac, 'Stopping infringing products at the Canadian border', 21 July 2010, *Smart and Biggar* available at <https://www.smartbiggar.ca/insights/publication/stopping-infringing-products-at-the-canadian-border>, accessed on 24 March 2019.

³⁴ Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Others International Organizations in Switzerland, 'New Progress in China's Protection of Intellectual Property Rights' April 2005, available at <http://www.china-un.ch/eng/bjzl/t193102.htm>, accessed on 17 March 2019.

³⁵ 'Enforcement of Intellectual Property Rights in China', 2013, *China IPR SME Helpdesk* available at https://www.china-iprhelpdesk.eu/sites/all/docs/publications/EN_Enforcement_Aug-2013.pdf, accessed on 23 March 2019.

has been done are intercepted then the right holders shall be notified and within the next three working days, are required under the law to apply for detention. In cases where the goods are detained upon the filing of an application by the right holder, the investigation is carried out by the Customs and a decision is given within thirty working days.³⁶ In the event Customs not being able to decide on the issue as to whether the suspected goods are infringing IPRs or not, then in that case the Customs notifies the right holders. Thereafter, the civil proceedings need to be initiated within fifty working days from the date of detention. In case of failure to do so, the goods are released.³⁷ Insofar as the comparison with the Indian Customs system is concerned, the system prevailing in China is analogous to the system of IPR enforcement in India, in more than one way, particularly in the manner of the registration and the provision for a time-bound manner of disposal of infringing goods. However, just to keep it insulated from any financial liability, the Indian Customs differs from Chinese Customs, as the former attracts the system of Bond and guarantee.

Hong Kong

Hong Kong has a well-recognized legal mechanism for the protection of IPRs. It provides the criminal sanction for the infringement of trademark and copyright. It also provides civil remedies for IPR protection in patents, registered designs, trademarks and copyright.³⁸ A constant review of legislation is done to keep abreast with the global norm and also for effectively ensuring IPR protection.³⁹ In Hong Kong, the laws of IPR comply with the WTO Agreement on TRIPS. Copyright is an 'automatic right' that arises after the creation of the work. Registration of copyright in Hong Kong is not compulsory. Copyright expires fifty years (subject to a few exceptions) after the death of the author as prescribed by the TRIPS. But for other IPRs, such as patents; designs; trademarks there has to be mandatory registration under the law for protection. Piracy and Counterfeiting are included under the 'Organized and Serious Crimes Ordinance' ("OSCO"), Hong Kong has further strengthened enforcement actions against syndicated piracy and counterfeiting.⁴⁰ Under the aforesaid Ordinance, powers of investigation into syndicated IPR infringement has been given to the Customs and this enforcing agency can also seek heavier penalties from the Court and can also press for the confiscation of the financial profits obtained as a result of piracy and counterfeiting.⁴¹

³⁶ Taxation and Customs Union, 'Customs Protection of IPR in China', *European Commission* available at https://ec.europa.eu/taxation_customs/sites/taxation/files/userguide_china_ipr_en.pdf, accessed on 23 March 2019.

³⁷ Deanna Wong, 'China: IP Laws and their Enforcement in China', 8 June 2018, *Mondaq* available at <https://www.mondaq.com/china/Intellectual-Property/702190/IP-Laws-And-Their-Enforcement-In-China>, accessed on 22 March, 2019.

³⁸ Hong Kong, China, 153 texts, "Main IP Laws enacted by the legislature", available at <https://wipo.lex.wipo.int/en/legislation/profile/HK>, accessed on 17 March 2019.

³⁹ Adelaide Yu, 'A Brief Guide to Intellectual Property in Hong Kong', 30 June 2013, *American Bar Association* available at https://www.americanbar.org/groups/business_law/publications/blt/2013/06/05_yu/, accessed on 22 March 2019.

⁴⁰ Peter Yam Tat-wing, 'Fighting Hong Kong's Organized Crime, The Organized & Serious Crime Ordinance', *116th International Training Course Visiting Experts' Papers, Resource Material Series No. 58* available at https://www.unafei.or.jp/publications/pdf/RS_No58/No58_06VE_Tat-wing2.pdf, accessed on 20 June, 2019.

⁴¹ 'Intellectual Property Rights Protection', Custom and Excise Department, *The Government of the Hong Kong*

Apart from criminal sanctions being enforced by the Customs of Hong Kong, the law even deals with border measures for ensuring TRIPS compliance. The IPR holder has a right to move to the court of law for obtaining the order of detention if he has a reasonable suspicion that a product imported is an infringing copy of work over which he has a right. The order of detention so obtained has sixty days validity and upon its issuance, the Hong Kong Customs puts the goods under detention pending the civil action that has to be taken by the holder of IPR against the infringer. There may be a possibility that an importer or any other person having an interest in the impugned goods may incur some damage or loss in the event of detention having been found as wrongful subsequently. In such a case, at the time of issuing the detention order, the Court can also ask the holder of IPR for providing sufficient security in a sum for their protection. Besides the above-referred security/ assurance, the right holder also needs to deposit an amount with the Hong Kong Customs that will sufficiently cover expenses incurred or likely to be incurred for executing the order of detention. The Hong Kong Customs has invested in considerable resources to fight the acts that infringe IPR. They have a powerful and sound devoted force which comprises of approximately two hundred and fifty officers in the Bureau of IP Investigation with an additional one hundred and fifty officers for the Special Task Force, which act together for enforcement of the criminal punishments against infringement of IPR. Besides the above two dedicated teams, the Hong Kong Customs also has two 'Anti-Internet Piracy Teams' which combats the activities on the internet that are infringing. The operations of Hong Kong Customs are primarily intelligence-based and they also tackle the problem of IPR infringement activities at all three levels, viz., manufacturing, distribution and storage. In March 2004, the Hong Kong Customs constituted the 'Intellectual Property Rights Protection Alliance' with the local IPR industry. In September 2004, they also launched the Alliance website for monitoring the illicit market and for strengthening the publicity against counterfeiting and piracy.

Reward schemes have also been launched for the informers by the Customs. These steps include establishing direct liaison channels with the "Guangdong Sub-Administration of the General Administration of Customs" and the "National Copyright Administration of the People's Republic of China." Hong Kong and China are an active participant in various international organizations such as the "World Customs Organization" (WCO) and the "Asia-Pacific Economic Cooperation" (APEC). For raising public awareness of IPR protection and for curbing the problems, Hong Kong Customs gives much significance to the continuing publicity and educational programs and also places significant emphasis on educating the youth so that they can value IPR and can stay away from any kind of IPR infringement, particularly, internet piracy.⁴²

Special Administrative Region available at https://www.customs.gov.hk/en/enforcement/ipr_protection/index.html, accessed on 23 March 2019.

⁴² European Union Intellectual Property Office, 'Status Reports on IP Infringement', June 2018, European Union Intellectual Property Office available at <https://euipo.europa.eu/ohimportal/en/web/observatory/status-reports-on-ip-infringement?>, accessed on 24 March 2019.

Republic of Korea

For efficient and comprehensive enforcement, Korea Customs Service ("KCS"), in June 2005, accorded importance to the protection of IPR and developed a strategy.⁴³ The strategy aimed at protecting the business and consumers' rights and building the national integrity on protection and enforcement of IPR. This strategy also included efforts to upgrade the capability of the customs department. To jointly analyze the data (internal and external) of foreign financial transactions, payment of tax and entry of cargo, the KCS established the Customs Data Warehouse ("CDW") in the year 2001. To help the interested parties in searching trademarks registered to Customs and also to get quick information of parallel importation, KCS also launched the 'Web-based Trademark Search System' in the year 2002.

Further, trademark holders are regularly invited by the Customs for educating the officers as to how to distinguish fakes from genuine goods. Intending to launch a crackdown on Korean counterfeiters, KCS requested twenty-four foreign customs administrations to share data about Korean dealers who have been recognized as counterfeit exporters. Customs authorities are empowered to suspend clearance of even the goods whose trademarks are not registered with the Customs. Since the Korean government follows the free trade policy with its neighbors still, due to its pro-active policy towards the IPR protection despite its growing trade with China, which is considered the most prolific violator, Korea has been successful in protecting the IPRs at its borders.

The Russian Federation

According to the Customs Code of Russian Federation, the Regulation provides for a uniform procedure to ensure IPR protection by the customs. It also includes the process of making an application to initiate action regarding the release and suspension of the infringing goods.⁴⁴

The holder of rights can file any such application only if there is a valid ground for believing that the carriage of goods across customs may violate one's exclusive right under the law. The customs authorities have been empowered to adopt appropriate steps regarding suspension or release of such suspected goods under Article 360 of the Code.

Singapore

The enforcement regime of IPR in Singapore is in compliance with the WTO Agreement on TRIPS. For the enforcement of the IPR of the owners, the legal system of Singapore deals with both criminal and civil action.⁴⁵ Civil action gives the option to

⁴³ Korean Intellectual Property Office, 'About KIPO', Korean Intellectual Property Office available at <https://www.kipo.go.kr/kpo/MainApp>, accessed on 24 March 2019.

⁴⁴ Nadezhda Volovik, 'On the Federal Law on the Customs Regulation in the Russian Federation', *Gaidar Institute of Economic Policy* available at <https://www.iep.ru/en/on-the-federal-law-on-the-customs-regulation-in-the-russian-federation.html>, accessed on 23 March 2019.

⁴⁵ Liew Woon Yin, 'Intellectual Property Rights, The United States-Singapore Free Trade Agreement - Highlights and Insights', *World Scientific*, available at https://www.worldscientific.com/doi/pdf/10.1142/9789812567161_fmatter, accessed on 20 March 2019.

the owners of IPR to claim damages, seek an injunction to restrain further infringement and to give up the infringing material. The offenders are also liable to be penalized by way of initiating criminal proceedings against them before the appropriate forum.⁴⁶ Even a separate criminal action lies against the offender which shows the compliance of the TRIPS provision. Singapore places much importance on the owners of IPRs. The agency named 'Intellectual Property Office of Singapore' ("IPOS") plays a crucial role in formulating and administering IP laws, promoting awareness on IP issues and providing infrastructure for facilitating the growth of IP in Singapore. The enforcement of inland retail-level piracy is done by the IPRs Branch of Police whereas the border enforcement is done by Singapore Customs. It is done along with the authority of Immigration and Checkpoints.⁴⁷ It is pertinent to specify that the right owner has to file a complaint before the Customs of Singapore about the shipment under the Notice System. This procedure is followed to enable the border authorities to detain the ship at the border. On the other hand, the border authorities are empowered to detain any suspected infringing items even without the requirement of filing any complaint.⁴⁸

United States of America

In the USA, there is an administrative group named the 'U.S. Customs and Border Protection' ("CBP"). This agency works with the legal authority under various laws, such as the Tariff Act, 1930, Lanham Act, 1946 and Copyright Act, 1976. The purpose of establishing the CBP was for determining the infringement regarding the trademarks and copyrights that are registered federally.⁴⁹ CBP is not authorized to determine any infringements pertaining to patents. But at the same, it is authorized to exclude those goods, from entry into the U.S., which has been determined by the U.S Commission on International Trade to infringe a patent that is valid and enforceable. For detaining and seizing the infringing merchandise, enforcement actions are taken up. Such actions are generally taken up by the CBP on its own accord. Enforcement actions may even be initiated based on information provided by the rights owners. CBP requires the requisite information on IPR relating to imported merchandise. IPR recordation device was designed for making such information readily available. This system has been embodied in the electronic IPR database of the CBP. With the help of this database, the rights owners can easily record their copyrights and trademarks with CBP. The recorded as well as non-recorded copyrights and trademarks are enforced by the CBP. However, those copyrights and trademarks that are recorded are given preference over those that are non-recorded with the CBP. Apart from these offices, there are additional offices of CBP having a commendable involvement in carrying out the operations of CBP. One of the major roles of CBP is to provide training to its officers enabling them to tackle surplus issues relating to the security of the nation, enforcement of trade

⁴⁶ Alisha Gill et al., 'The Development of Singapore's Intellectual Property Rights Regime', May 2014, *Lee Kuan Yew School of Public Policy, National University of Singapore*, available at https://lkyspp.nus.edu.sg/docs/default-source/case-studies/lkwms_series01_sg_ip.pdf?sfvrsn=5135960b_2, accessed on 20 June 2019.

⁴⁷ Susanna Leong, *Intellectual Property Law of Singapore*, Singapore Academy Publishers, Singapore, 2013, p. 12.

⁴⁸ James W. Peters, 'Toward Negotiating a Remedy to Copyright Piracy in Singapore', vol. 7, no. 3, *Northwestern Journal of International Law and Business*, 1986, p. 563.

⁴⁹ 'IP Protection in the USA', *Australian Government, IP Australia* available at <https://www.ipaustralia.gov.au/understanding-ip/taking-your-ip-global/ip-protection-usa>, accessed on 20 March 2019.

relating to IPR and a narcotic interception.⁵⁰

After the post-entry verification, the CBP incorporated a novel tool for IPR enforcement to complement the traditional policy of physically examining the goods and seizing it. The CBP makes use of the expertise of those involved in the work of auditing and focuses on importers to keep a close watch on their monetary transactions and corporate practices that are connected to trade in counterfeit goods and pirated goods. During IPR audits, penalties are imposed by CBP on the imports of IPR infringing goods. During the examination of a shipment, if CBP's officers suspect that goods might be infringing IPR, then multiple resources exist for their assistance for finding out the infringement. The officials concerned may also go through the online recordation database of CBP that contains essential data relating to IPRs for which the CBP keeps a record. They may also seek the consultation of legal experts hired by the right holder or the CBP. They may also refer to training guides published by the right holder about product identification. A comparison of the suspect goods with the genuine product supplied by the right holder may also be done by the officers. They may also obtain an analysis of the product done by the CBP laboratory in reaching a conclusion about the genuineness of the goods in question. The use of technology as in the US should be implemented in India as it would be very helpful.

Japan

Japan Customs conducts law enforcement activities of IPR at borders under Article 69 of Customs Law of Japan. Paragraph 8 of this Customs law stipulates that "goods shall not be imported which infringe on patent rights, utility model rights, design rights, trademark rights, copyrights, neighboring rights, circuit layout rights and plant breeders' rights and which violate the Unfair Competition Prevention Law".⁵¹ There are 133 officers deployed in charge of IPR at the major Customs offices throughout Japan for enforcement of customs law at borders (Customs control areas).⁵² Since January 1995, the enforcement of law at the borders has been conducted responding to the TRIPS Agreement,

The right holder can move an application for suspension of import before the Director-General of Customs specifying the kind of right involved, the name of infringing goods along with the reason. Evidence also has to be attached certifying the fact of infringement such as striking features of the genuine goods and those of the infringing goods. An application for suspension of suspected import consignment has to be submitted before a special investigator for IPRs out of the nine Regional Customs headquarters. In case it is filed to the nationwide Customs, nine copies of

⁵⁰ 'Intellectual Property Rights Experts Group', *Asia-Pacific Economic Cooperation* available at <https://www.apec.org/Groups/Committee-on-Trade-and-Investment/Intellectual-Property-Rights-Experts-Group>, accessed on 20 March, 2019.

⁵¹ Jinzo Fujino & Hideaki Yoshida, 'The Enforcement of the Intellectual Property Rights in Japan', 2018, *Japan Patent Office* available at https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/66_enforcement.pdf#view=fit&toolbar=1&navpanes=0, accessed on 20 March 2019.

⁵² Richard V. Burgujian, 'Enforcement of Intellectual Property Rights in Japan', vol. 91, *Proceedings of the ASIL Annual Meeting*, 1997, p. 395.

the application for import suspension is to be filed. With each application for import suspension, a certified copy of the official registration of the right, official gazette and a sample or a photo of the genuine goods and the infringing goods need to be attached. Upon discovering the suspicious cargo by the Customs officials, the importer and the relevant right holders are notified of the consignment. Thereafter, the identification procedure begins that needs to be completed within a month. The evidence needs to be submitted within 10 working days of the receipt of notice regarding the start of the identification procedure. However, the time limit is subject to extension if a request is made by the parties concerned along with justifications for such extension. The evidence received from the importer or the right holders is the basis for decision making. During the identification procedure, an inspection of the suspected cargo can be conducted by the applicant or the importer within the Custom house or bonded area, in the presence of officers in charge of IPRs to verify the genuineness of the intercepted goods. The applicant also has a right to perform a detailed investigation of the suspected cargo if it is not possible to determine the infringement from its appearance under given conditions. Once the identification process is over, the decision rests with the Director-General. This issue needs to be answered by specifying reasons and thereby notifying the same to the right holder and importer both. Now, if the importer is aggrieved by the decision of the Director-general of Customs, he has a right to file a protest within two months. If the importer does not protest within the stipulated time period or does not voluntarily dispose of the infringing goods, then the Customs have been empowered to confiscate and destroy the goods. A method has been adopted by the Customs which provides for consultation with the experts wherever found appropriate on the matter of the application for import suspension and the identification procedure. In the event of contradictory opinions of the applicant and the importer, on the suspected cargo which renders it difficult to identify and reach a conclusion the Director-General of Customs orders the applicant for providing security or equivalent assurance within 10 days for protecting the interests of importer. For computation of the amount of the security that needs to be deposited, the sum total of storage charge during the process of identification, the loss of profit and other damages are taken into consideration. This system in Japan is the same as in India and also provides stringent measures against the violators, which may include imprisonment up to seven years also.

Conclusion

The above discussion reflects that the measures adopted for the effectiveness of their law concerning IPRs are found to vary from country to country.⁵³ Further, the quantum of punishment and other similar penal provisions envisaged by countries like Japan and the European Union ("EU") are exemplary which gives these countries a vital edge over our Customs as it effectively reduces the misuse of IPR schemes by acting as a

⁵³ 'Enforcement of Intellectual Property Rights', *World Intellectual Property Organization, Intellectual Property Handbook: Policy, Law and Use, Chapter 4* available at <https://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch4.pdf>, accessed on 27 March 2019.

strong deterrent.⁵⁴ The developing countries like India are now well placed in the world economy as we have well educated and much aware and economically stronger middle class who have sound buying power and an ever-increasing thirst for quality products and services. The established business houses are essentially protective and at times overprotective. The reputation and the exploitation of that reputation by way of IPRs is a matter of concern. The established business houses now use IPRs as a commercial tool which is not unethical but at times the IPRs are used in a coercive and arm twisting manner, particularly in Patent matters where even the lifesaving pharmaceutical products have become a major policy matter while defining not only the trade and commerce but also the bilateral relations between two countries. As most of the developing world is a signatory to the conventions and treaties on IPRs, any meaningful inter-country trade essentially requires the compliance of the international IPR regime. It is not to be denied that most of the counterfeit goods enter the market through the borders only. Therefore, the first line of defense is the responsibility of the Customs. The law has been promulgated and an effective, user-friendly, transparent system needs to be evolved for the right holder, importer and staff and officers.⁵⁵ Thus it can be concluded that the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 are the guiding principles of Customs which have been successful in checking the influx of counterfeit despite growing malpractice of smuggling. However, certain modifications are requisite in these Rules. Comparison with developed countries reflects that our rules and procedure are based on international treaties and are fully aligned with the provisions of TRIPS and the concern of revenue has been set aside by the government as the goods found violating the IPRs are subject to destruction. Thus, it is evident that the revenue has justified its approach of the nation first.

Suggestions for Indian Customs

Indian Customs is responsible for enforcing the IPR law at both the border control points and inland depots. These operations are primarily examination led and seldom based on credible intelligence. The discussion shows that provisions under the IPR Rules, 2007 are not adequate as it provides only the monetary penalties. These statutory provisions can effectively be used to check the counterfeit goods beyond the customs point as the counterfeit goods are not limited to import but are being produced in the mainland of the country. But the irony is that even the other wing of the same department like the Central Excise (now Central GST), was at times not taken along and there are instances when counterfeit goods were successfully caught by the central excise officers in factory premises and the machines and material used to produce the counterfeit were found imported through an Indian port, yet the customs were

⁵⁴ National Academy of Customs, Indirect Tax and Narcotics, 'Enforcement of Intellectual Property Rights at Border: Legal Provisions under Customs Act, 1962', 21 February 2016, *National Academy of Customs, Indirect Tax and Narcotics* available at https://www.nacnkanpur.gov.in/mysiteadmin/media_images/Enforcement%20of%20IPRs%20at%20Border%20Book%20No.03.pdf, accessed on 27 March 2019.

⁵⁵ The TRIPS effectively came into force on 1 January 1996 and it has explicitly been made part of the WTO. Therefore, the members of WTO and GATT are bound to comply with it. The basic principles of GATT had also been made applicable to TRIPS Agreement. It is significant to mention that the TRIPS is considered to be the 'first multilateral agreement' that had played a major role in enforcing and harmonizing certain minimum substantive IPRs.

not taken in the loop to find out about the other similar imports. Therefore, for any effective stoppage of the misuse of IPRs the close coordination not between the intra department but inter-department must be promoted. The minimum level of protection provided by the TRIPS Agreement is no longer viewed as adequate to fight the current cross-border traffic in counterfeit and pirated goods.⁵⁶ Intending to strengthen the border measures for the protection of IPR, the Indian Government came up with the Rules of 2007 by which the protection level of the rights holders were enhanced to a great extent. The Ram Kumar story tells about problems faced by the importers that they had to face by way of being involved in multiple litigations to obtain clearance of their goods. Furthermore, there is a likelihood that the decisions laid down by the customs authorities might not be satisfactory, rather inaccurate and arbitrary due to less experience in the matters of infringement of intellectual property. After analyzing the rules, it has been observed that the procedures laid down therein are not in compliance with TRIPS, therefore not equitable and fair. It is suggested that India needs to adopt the following changes for better implementation

1. A reasonable period for disposal of proceedings is missing in the Rules. Therefore, the Indian Government must make the necessary amendment and incorporate the rule that the disposal of proceedings before the customs, after suspension of clearance of goods, must be done within a reasonable period.
2. There must be a requirement for the rights holder to establish a prima facie case on the infringing character of the specific consignment of goods and the patent's validity to ensure that there is no undue burden on the customs.
3. The complex issues of patent infringement cannot be tackled by the customs authorities due to a lack of technical expertise. A distinct and separate cell altogether should be established to the IP Appellate Board. The amendment in the Rules is the need of the hour for divesting the customs authorities with the function of adjudication.
4. The provisions for awarding punitive damages must be incorporated in the Rules to tackle cases where the baseless and frivolous claim of the right holder is found.
5. Dedicated IPR Cell is limited to the procedural aspect of IPR and they are yet to enforce the criminal sanctions against IPR infringement. Availability of a specialized dedicated and committed task force at a zonal level under the direct command of a senior officer of the Customs Preventive Branch would greatly enhance the enforcement part of IPR.
6. The working relationship of the customs with the industry is largely very close but there is a void as far as regular interactions are concerned to combating the piracy and counterfeiting activities. Indian Customs have maintained a very close association with the neighboring and foreign enforcement agencies for an intelligent exchange through its officers posted in foreign mission offices called COIN (Customs Overseas Intelligence Network). Taking the example

⁵⁶ Shashank P. Kumar, 'European Border Measures and Trade in Generic Pharmaceuticals: Issues of TRIPS, Doha Declaration and Public Health', vol. 15, no. 6, *International Trade Law and Regulation*, 2009, p. 176.

of Australia which has an 'Intellectual Property Enforcement Consultative Group' to forge links of Australian Customs with industry, India could also have an agency to do so. Direct liaison channels could also be developed with the countries from where there is substantial influx of counterfeit.

7. Capacity building of Customs officers for information analysis and risk management towards IPR enforcement is the key for successful enforcement of IPRs at borders. Junior level officers which are the backbone of the Indian Customs and this larger chunk is just devoid of any quality training as far as IPR is a concern.
8. Destruction charges are a financial burden on right holders. Therefore, the said rules need to be amended in such a way that the right holder comes forward to eliminate the menace of counterfeit. The department may either bear the burden of charges⁵⁷ or an exclusive fund can also be created at the port level which may be utilized to meet out the expenses of safekeeping of samples, demurrage and destruction charges. The fund may be raised by the disposal of pirated goods domestically or internationally under the transparent procedure of bidding.
9. Importers have a lack of information on the existence of any IPR. Indeed, the information of the right holders of thousands of goods is not easily accessible to a common person who intends to import the goods with huge demands in the market. It is suggested that the category wise or tariff-based nomenclature wise or if possible alphabetical order wise list may be made available on the web portal of CBIC so that the common trader can have easy access to the various IPRs and may be saved from losses.
10. Several adjudicatory bodies deal with intellectual property-related claims. These are the District Courts, High Courts and the customs authorities in metropolitan cities like Delhi, Mumbai and Chennai. Often the disputes of the litigants pertain to the claims that the patents are invalid. This leads to an increase in revocation proceedings.⁵⁸

Further as submitted above, an expert committee to help the Customs in a matter of complexities would serve a great deal in subduing the practice of counterfeit. Therefore, cooperation from other agencies like the enforcement directorate is required for effective countermeasures against counterfeit and piracy a collective approach is the need of the hour.

⁵⁷ The Prevention of Money Laundering Act, 2002 of India.

⁵⁸ The 'efficacious alternate remedy principle' provides that, 'where an alternate remedy is available, which is equally adequate and efficacious, a court may refuse to exercise its discretionary jurisdiction.' Indian Courts have applied this principle in cases related to the supervisory and writ jurisdiction.