

## BORDER ENFORCEMENT OF TRADEMARK RIGHTS: THE ROLE OF CUSTOMS AUTHORITIES IN COMBATING COUNTERFEIT IMPORTS

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### Abstract

This paper examines the role of border enforcement mechanisms in protecting trademark rights and preventing the importation of counterfeit goods into domestic markets. With the consistent expansion of global trade and e-commerce, the circulation of counterfeit products has become a significant challenge for governments, businesses, and consumers. The study analyses the international legal framework governing border enforcement, specifically the provisions of the TRIPS Agreement by the World Trade Organisation, which requires member states to establish and implement procedures enabling customs authorities to halt the release of suspected counterfeit goods. The paper further evaluates the Indian legal regime, focusing on the Customs Act 1962, the Trade Marks Act 1999, and the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007. Through an analysis of judicial decisions, comparative practices in other jurisdictions, and contemporary enforcement challenges, the paper argues that effective customs enforcement is an indispensable safeguard against the entry of counterfeit goods and a crucial component of modern trademark protection.

**Keywords:** Intellectual property rights, Counterfeit goods, Border enforcement, Trademark, Customs authorities

### I. Introduction

The global proliferation of counterfeit goods represents one of the most pressing challenges confronting international trade law today. From fake luxury watches sold in street markets to sophisticated pharmaceutical counterfeits entering global supply chains, trademark infringement has grown exponentially in scale and complexity. According to the Organisation for Economic Co-operation and Development (OECD) and the European Union Intellectual Property Office (EUIPO), trade in counterfeit and pirated goods accounts for up to 2.5 per cent of global trade, representing hundreds of billions of dollars annually.<sup>2067</sup>

The harms generated by this illicit trade are multi-dimensional. The actual owners of the brands suffer direct revenue losses and a loss of goodwill. Consumers are deceived into purchasing inferior or potentially dangerous products. Governments lose tax revenue, and legitimate businesses operating in compliance with the law are exploited by actors who profit from this. In industries such as pharmaceuticals, for example, the consequences of counterfeiting extend beyond economic harm to pose direct threats to public health and safety, as the Courts have repeatedly reiterated.

Trademarks occupy a central place in this framework of harm and protection. They act as commercial origin identifiers, which enable producers to connect with consumers while showing product quality and brand identity. The unauthorised use of these marks undermines

<sup>2067</sup> OECD & EUIPO, Trends in Trade in Counterfeit and Pirated Goods 14 (2019).

market integrity. The need for national trademark rights protection at international borders exists as a vital global security requirement.

Customs authorities protect ports, airports, and borders by serving as the primary defence against counterfeit goods that enter a country. Their work involves two main tasks, which include collecting duties and safeguarding intellectual property rights through enforcement activities that take place during imports before any prohibited products reach their destination. International treaties and national laws recognise border enforcement functions as essential elements that protect trademarks throughout their entire range of national security operations. This paper examines the border enforcement framework that protects trademark rights by examining how customs authorities work to prevent counterfeit products from entering the country. The analysis begins at the international level by examining how the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) affects major trading nations, before focusing on Indian legal practices. The paper also evaluates judicial interpretations of the relevant provisions. The report concludes with suggestions to improve law enforcement capabilities to address the challenges that arise from e-commerce and advanced counterfeiting methods.

The central thesis of this study is that border enforcement mechanisms play a crucial and irreplaceable role in protecting trademark rights and preventing counterfeit goods from entering domestic markets. Effective customs enforcement is not merely a supplement to judicial remedies but a necessary precondition for the meaningful protection of intellectual property rights in an era of globalised trade.

## II. Conceptual Framework: Trademarks and Counterfeiting

### A. Meaning and Purpose of Trademarks

A trademark is a distinctive sign, such as a word, logo, symbol, shape, colour, or

combination, which a manufacturer or trader uses to identify its goods or services and distinguish them from those of its competitors. At its most fundamental level, a trademark serves a source-identification function: it tells consumers who made the product and enables them to make informed purchasing decisions based on prior experience or reputation.<sup>2068</sup>

Beyond source identification, trademarks serve several interrelated purposes. It extends protection to the goodwill and reputation that owners build through their continuous investments in advertising and quality checks. It also protects consumers from deceptive practices by ensuring that products displaying a certain trademark belong to the actual trademark owner. Trademark law serves two purposes by protecting brand owner rights and maintaining market transparency and consumer safety, which serve public interests.

Under the Trade Marks Act 1999, the primary legislation governing trademark law in India, a trademark is defined as any mark with the ability of being represented graphically and of distinguishing the goods or services of one brand from those of others.<sup>2069</sup> The Act grants the registered trademark owner the exclusive right to use the mark in relation to the goods or services for which it is registered and to take legal action against any person who, without authorisation, uses an identical or deceptively similar mark.<sup>2070</sup>

### B. What Constitutes Counterfeit Goods

For intellectual property law and customs enforcement, counterfeit goods are goods that have a trademark similar to or identical to another lawfully registered trademark, used without the permission of the trademark owner. The essential element of counterfeiting is the intentional appropriation of another's mark to deceive consumers into believing that the

<sup>2068</sup> Trade Marks Act, 1999, § 2(1)(zb), No. 47, Acts of Parliament, 1999 (India)

<sup>2069</sup> M. Kolasa, The Scope and Limits of Protection for Distinctive Signs against the Community Design, (2018), <https://doi.org/10.5771/9783845243856>.

<sup>2070</sup> Trade Marks Act, 1999, § 29, No. 47, Acts of Parliament, 1999 (India).

goods originate from or are authorised by the trademark owner.

It is important to distinguish counterfeiting from adjacent concepts, such as parallel imports and trademark infringement, in their broader senses. Parallel imports are genuine goods placed on the market in one country by or with the consent of the trademark owner, and subsequently imported into another country without the owner's authorisation. While parallel imports may raise complex legal questions regarding trademark exhaustion, they are not counterfeit goods because they do not bear unauthorised copies of the trademark.

### III. International Legal Framework for Border Enforcement

#### A. The TRIPS Agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights, discussed during the Uruguay Round of multilateral trade negotiations and annexed to the Agreement Establishing the World Trade Organisation in 1994,<sup>2071</sup> represents the most comprehensive international instrument governing intellectual property rights in the context of international trade.<sup>2072</sup>

Part III of the TRIPS Agreement, titled 'Enforcement of Intellectual Property Rights,' contains sections, such as Section 4, comprising Articles 51 through 60, for 'Special Requirements Related to Border Measures.' This section establishes the minimum obligations that WTO member states must fulfil regarding border enforcement of intellectual property rights, focusing on trademark counterfeiting.<sup>2073</sup>

Article 51 of the TRIPS Agreement requires member states to adopt procedures enabling a right holder who has valid grounds for questioning the import of counterfeit trademark goods to file an application with competent authorities for the suspension by customs

authorities of the release of such goods into free circulation.<sup>2074</sup>

Article 52 sets out the requirements for such an application, including the provision of adequate evidence to establish the applicant's prima facie claim and a sufficiently detailed description of the goods to make them easily recognisable.<sup>2075</sup>

TRIPS Article 58 also empowers customs authorities to act on their own initiative, ex officio, where they have acquired sufficient evidence to suspect that goods are counterfeit. This provision recognises that rights holders may not always be present at the point of importation and that customs officers themselves may be in a position to identify obviously infringing goods.<sup>2076</sup>

The TRIPS Agreement also has procedural safeguards to prevent abuse of border enforcement mechanisms, including provisions for security or assurance from right holders, time limits on the suspension of goods, and the right of importers to have the suspected goods examined. These reflect the fundamental principle that border enforcement must balance the protection of trademark rights against the facilitation of legitimate trade.

#### B. World Trade Organisation Supervisory Role

The WTO exercises supervisory oversight of member states' compliance with their TRIPS obligations through the TRIPS Council. This standing body reviews national intellectual property laws and practices and serves as a forum for resolving trade-related intellectual property disputes. The WTO's dispute settlement system, established under the Understanding on Rules and Procedures Governing the Settlement of Disputes, provides the ultimate mechanism for enforcing TRIPS obligations,

<sup>2071</sup> S. J. Gardiner, The nature of the right to a trade mark in South African law. (1995). <https://core.ac.uk/download/43176038.pdf>

<sup>2072</sup> TRIPS Agreement, art. 15, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 1C, 1869 U.N.T.S. 299.

<sup>2073</sup> TRIPS Agreement, arts. 51-60, Apr. 15, 1994, 1869 U.N.T.S. 299.

<sup>2074</sup> TRIPS Agreement, art. 51, Apr. 15, 1994, 1869 U.N.T.S. 299.

<sup>2075</sup> TRIPS Agreement, art. 52, Apr. 15, 1994, 1869 U.N.T.S. 299.

<sup>2076</sup> TRIPS Agreement, art. 58, Apr. 15, 1994, 1869 U.N.T.S. 299.

including those relating to border enforcement.<sup>2077</sup>

### C. International Best Practices

The European Union has developed one of the most sophisticated and comprehensive border enforcement regimes for intellectual property rights globally. Council Regulation 608/2013 establishes a harmonised framework under which customs authorities of EU member states may, on application by rights holders or on their own initiative, suspend the release of or detain goods suspected of violating intellectual property rights, including trademarks.<sup>2078</sup>

Under the EU framework, rights holders may file applications for action with the customs authorities of a single member state and obtain protection across the entire EU. The regulation establishes detailed procedures for notifying rights holders and declarants, examining detained goods, and destroying infringing goods when the rights holder and declarant agree, without the need for formal judicial proceedings.<sup>2079</sup>

In the United States, U.S. Customs and Border Protection (CBP) plays a central role in enforcing intellectual property rights. Rights holders may record their trademarks with CBP, which then uses that information to identify and detain suspected counterfeit goods. In fiscal year 2023, CBP recorded thousands of seizures of counterfeit goods, with a combined manufacturer's suggested retail price running into billions of dollars.<sup>2080</sup>

Japan operates a similarly robust system under which rights holders may submit applications to the Japan Customs authorities to record their intellectual property rights. Japanese customs officers undergo specialised training in identifying intellectual property rights and work

closely with rights holders to verify whether detained goods are genuine or counterfeit.<sup>2081</sup>

### IV. Legal Framework for Trade mark Border Enforcement in India

#### A. The Customs Act, 1962

This Act provides the primary legislative basis for customs enforcement of IP rights in India. Section 111 of this Act empowers customs authorities to confiscate goods that are imported in violation of any restriction imposed by or under the Act or any other law for the time being in force. This provision encompasses goods whose importation is prohibited under intellectual property laws, including the Trade Marks Act 1999.<sup>2082</sup>

Section 112 of the Customs Act imposes penalties on persons who render goods liable to confiscation under Section 111. These penalties may include fines and, in cases of deliberate and knowing importation of prohibited goods, may extend to substantial monetary sanctions.<sup>2083</sup>

While the Customs Act provides broad powers of confiscation and penalty, it does not, in itself, establish a specific procedural framework for the enforcement of intellectual property rights at the border. This gap is addressed by subsidiary legislation enacted specifically to enforce intellectual property rights at the border.

#### B. IPR (Imported Goods) Enforcement Rules, 2007

The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (*hereinafter referred to as IPR Rules*) is the primary statute for implementing its TRIPS obligations regarding border enforcement of trademark rights. The IPR Rules establish a structured framework under which trademark owners may record their rights with customs authorities and secure proactive

<sup>2077</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organisation, Annex 2, 1869 U.N.T.S. 401.

<sup>2078</sup> Council Regulation 608/2013, 2013 O.J. (L 181) 15 (EU).

<sup>2079</sup> *Id.* art. 6.

<sup>2080</sup> U.S. Customs & Border Protection, Intellectual Property Rights Seizure Statistics: Fiscal Year 2023 (2024).

<sup>2081</sup> Japan Customs, Guide to Customs Procedures for Intellectual Property Rights Protection (2022).

<sup>2082</sup> Customs Act, 1962, § 111, No. 52, Acts of Parliament, 1962 (India).

<sup>2083</sup> Customs Act, 1962, § 112, No. 52, Acts of Parliament, 1962 (India).

enforcement against suspected counterfeit imports.<sup>2084</sup>

Under Rule 3 of the IPR Rules, a rights holder must file an application with the Commissioner of Customs to record intellectual property rights in respect of goods imported or likely to be imported into India. The application must be accompanied by a copy of the trademark certificate, details of the rights holder and the authorised agent or distributor in India, a description and images of the genuine goods bearing the trademark, and information enabling customs officers to identify potentially infringing goods. Upon satisfaction that the application is in order, the Commissioner of Customs records the rights, which remain valid for five years and are subject to renewal.<sup>2085</sup>

Rule 5 of the IPR Rules empowers customs officers who detect goods suspected of infringing a recorded trademark to suspend the clearance of such goods and issue a notice to the rights holder. The rights holder is then allowed to inspect the detained goods and to confirm whether they are counterfeit.<sup>2086</sup>

Rule 7 provides for the destruction or disposal of goods confirmed to be counterfeit, in accordance with the procedure prescribed under the Customs Act. The rules also include provisions for the release of detained goods when the rights holder fails to respond within the prescribed period or confirms that the goods are genuine, thereby ensuring that the enforcement mechanism does not unduly impede legitimate trade.<sup>2087</sup>

#### **V. Procedure for Detention of Counterfeit Trademark Goods**

The procedural framework for the detention and seizure of counterfeit trademark goods under the Indian regime may be understood as

comprising four sequential stages, each serving a distinct enforcement function.

The first stage is the recording of intellectual property rights. The trademark owner, whether an individual, company, or association, submits an application to the relevant customs authority, together with the trademark registration certificate, product descriptions, sample images of authentic products, and information about the rights holder's authorised distributors. Upon acceptance of this application, the customs authority maintains a database of registered trademarks that customs officers at ports and airports may consult when inspecting incoming shipments.

The second stage involves the detection of suspected infringing goods by customs officers during routine inspections or targeted examinations of consignments. Officers trained in intellectual property rights enforcement examine shipments against the information recorded in the database and, where goods are found to bear marks identical or deceptively similar to recorded trademarks, suspend the clearance of those goods and issue a notice of detention.

The third stage is notifying the rights holder. The rights holder has five working days to examine the confiscated items according to the existing IPR Rules and to determine whether they are counterfeit. In practice, rights holders frequently engage customs representatives or lawyers to help with this process, and the technical expertise of the representatives is important for making quick, accurate determinations.

The fourth and final stage depends on the outcome of the rights holder's inspection. The customs authority will begin confiscating and destroying the goods once they prove they are counterfeit. The goods will be released when the rights holder authenticates their status as genuine, which happens in situations involving parallel imports or incorrectly described products. The Commissioner of Customs can refer disputed infringement cases for official decision-making, allowing parties to appeal to

<sup>2084</sup> Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, S.O. 1881(E), No. 1912(E), Acts of Parliament, 2007 (India).

<sup>2085</sup> Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, r. 3, No. 1912(E), Acts of Parliament, 2007 (India).

<sup>2086</sup> Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, r. 5, No. 1912(E), Acts of Parliament, 2007 (India).

<sup>2087</sup> Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, r. 7, No. 1912(E), Acts of Parliament, 2007 (India).

the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and to the highest judicial court.

## VI. Judicial Interpretation and Case Law

### A. Indian Cases

The Indian judiciary has played a significant role in affirming the scope of border enforcement of trademark rights, and a review of key decisions highlights the principles governing this area.<sup>2088</sup>

In *Commissioner of Customs v. Adidas India Marketing Pvt Ltd*, the Supreme Court of India affirmed that the importation of goods bearing counterfeit trademarks constitutes a violation not only of the Trade Marks Act, 1999, but also of the prohibitions on the importation of goods against the public interest under the Customs Act, 1962. The Court upheld the confiscation of the impugned goods. It emphasised that customs authorities have both the power and the obligation to take proactive measures to prevent the importation of counterfeit branded goods.<sup>2089</sup>

The Delhi High Court's decision in *Xerox Corporation v. Puneet Suri* made an important contribution by clarifying the distinction between counterfeit goods, which bear the unauthorised copies of a registered trademark, and parallel imports, which are authentic products that enter the destination market without the trademark owner's permission. The Court held that, while counterfeit goods are unequivocally subject to confiscation, the treatment of parallel imports requires a more nuanced analysis of the applicable doctrine of trademark rights exhaustion.<sup>2090</sup>

In *Sheikh and Mahajan LLP v. Commissioner of Customs*, the Customs, Excise, and Service Tax Appellate Tribunal examined how border enforcement operations work in practice. The customs authorities intercepted and

confiscated a shipment of shoes that displayed a mark that closely resembled the Adidas trademark. The Tribunal upheld the confiscation of the goods, finding that the customs authorities had correctly applied the procedures set out in the IPR Rules and that the rights holder's confirmation of infringement constituted sufficient grounds for confiscation.<sup>2091</sup>

In *Shri Gorakh Bhandar v. Commissioner of Customs*, the Tribunal upheld the confiscation of a consignment of branded goods because the goods had trademarks registered to well-known brands without authorisation. The decision reinforced the principle that the burden of establishing the legitimacy of imported goods lies with the importer, and that customs authorities are entitled to rely on the rights holder's identification of the goods as counterfeit.<sup>2092</sup>

In *Rolex SA v. Union of India*, the Delhi High Court upheld the seizure by customs authorities of a large quantity of watches bearing marks closely resembling the registered Rolex trademark. The Court rejected the importer's contention that the goods were intended for re-export rather than domestic sale, holding that the prohibition on the importation of counterfeit goods applies at the point of entry into the Indian customs territory, irrespective of the importer's stated intention regarding the goods' ultimate destination.<sup>2093</sup>

### B. International Cases

European jurisprudence has established fundamental legal principles that define how trademark rights should be enforced at borders for goods that transit through customs, including the evidence requirements for their confiscation.

In the consolidated cases of *Koninklijke Philips Electronics NV v. Lucheng Meijing Industrial Co.*

<sup>2088</sup> S. S. -, The Evolving Jurisprudence of Environmental Protection in India: A Critical Analysis of the Judiciary's Role, 6 INT'L J. MULTIDISCIPLINARY RES. (2024), <https://doi.org/10.36948/ijfmr.2024.v06i05.29814>.

<sup>2089</sup> *Commissioner of Customs v. Adidas India Marketing Pvt Ltd*, (2019) 368 ELT 193 (India).

<sup>2090</sup> *Xerox Corp. v. Puneet Suri*, (2008) 37 PTC 505 (Del.) (India).

<sup>2091</sup> *Sheikh & Mahajan LLP v. Commissioner of Customs*, Customs Appeal No. 52042 of 2019 (CESTAT Ahmedabad).

<sup>2092</sup> *Shri Gorakh Bhandar v. Commissioner of Customs*, 2016 (336) ELT 459 (Tri.-Mumbai) (India).

<sup>2093</sup> *Rolex SA v. Union of India*, (2006) 133 ELT 286 (Del.) (India).

and Nokia Corporation v. HM Revenue and Customs, the Court of Justice of the European Union addressed the circumstances under which customs authorities may detain goods in transit, that is, goods passing through EU territory en route to a third country destination on the ground that they infringe intellectual property rights. The Court held that goods in transit may be detained where there is sufficient evidence to suspect that they will be placed on the EU market without authorisation, while also emphasising that mere suspicion of infringement, without more, may not be sufficient to justify detention where the goods are genuinely destined for a non-EU market.<sup>2094</sup>

The Nokia case specifically addressed the evidentiary threshold required before customs authorities may seize suspected counterfeit goods, holding that they must have evidence indicating that the goods infringe the relevant intellectual property rights and may not rely solely on the fact that the goods are passing through EU territory.<sup>2095</sup>

### VII. Challenges in Border Enforcement

Notwithstanding the legal frameworks and judicial precedents discussed above, the effective enforcement of trademark rights at the border faces formidable practical challenges that test the capacity and ingenuity of customs authorities across jurisdictions.

The first and perhaps most fundamental challenge is the difficulty of identifying sophisticated counterfeits. Counterfeiters have invested heavily in the technologies and processes necessary to produce imitations of branded goods that are indistinguishable from the genuine article. The replication of holograms, authentication codes, and packaging has reached a level of sophistication that frequently confounds even experienced customs officers. Only a detailed technical examination, often requiring the involvement of

representatives of the rights holder, can conclusively establish the counterfeit nature of such goods.

The sheer volume of international shipments presents a structural challenge to effective border enforcement. Container shipping has transformed global trade by enabling the movement of goods in unprecedented quantities. Tens of millions of containers pass through major ports every day, and authorities can only inspect a fraction of these consignments. Sophisticated risk profiling and intelligence-led targeting are therefore essential components of any effective border enforcement strategy, but these capabilities require significant investment and capacity.<sup>2096</sup>

The growth of online trade has introduced a new dimension to the challenge of border enforcement. The growth of e-commerce marketplaces has enabled consumers to purchase goods directly from overseas suppliers, resulting in a drastic increase in the volume of small postal and courier parcels. These small shipments are particularly difficult to screen effectively, as the resources required for individual parcel inspection are prohibitive relative to the value of individual consignments. At the same time, counterfeiters have increasingly exploited small-parcel channels to distribute infringing goods in quantities that, individually, may fall below the threshold of enforcement attention.<sup>2097</sup>

Coordination failures among the various actors involved in enforcement at the border are also another obstacle. The enforcement process requires all involved parties, including customs authorities, police, other law enforcement agencies, rights holders and their representatives, port authorities, and postal and courier services, to work together without interruption. The effective enforcement demands integrated intelligence-driven solutions, which information silos, jurisdictional

<sup>2094</sup> Case C-446/09 & C-495/09, Koninklijke Philips Elecs. NV v. Lucheng Meijing Indus. Co., 2011 E.C.R. I-12435.

<sup>2095</sup> Case C-495/09, Nokia Corp. v. HM Revenue & Customs, 2011 E.C.R. I-12470.

<sup>2096</sup> World Customs Organisation, *Illicit Trade Report 2022* (2023).

<sup>2097</sup> U.S. Customs & Border Protection, *E-Commerce and Small Parcel Strategy* (2022).

ambiguities, and resource constraints prevent from being implemented.<sup>2098</sup>

### VIII. Comparative Perspective

A comparison of the border enforcement regimes of the United States, the European Union, and India reveals both common principles and significant divergences in the sophistication, resourcing, and effectiveness of the respective systems.

The amalgamation of enforcement with comprehensive rights-holder engagement distinguishes the U.S. CBP model. The CBP's e-Recordation system enables rights holders to register trade marks, copyrights, and other intellectual property rights electronically, and the agency maintains a dedicated National Intellectual Property Rights Coordination Center that brings together representatives of multiple federal agencies to coordinate intelligence-led enforcement. The agency's use of advanced imaging technology, artificial intelligence, and data analytics to target high-risk shipments represents best practice in applying technology to border enforcement.

The EU's framework, established under Regulation 608/2013, offers the advantage of a single-application system enabling rights holders to secure protection across all EU member states with a single filing. The destruction procedure, which has been simplified by this legislation, provides that goods may be destroyed without formal court proceedings where both the rights holder and the declarant agree, reduces the time and cost of enforcement and provides a strong deterrent against repeat infringement. The EU also maintains an enforcement database and publishes annual status reports on intellectual property infringement that enable cross-border learning and coordination.<sup>2099</sup>

By contrast, India's system, while grounded in sound legal principles, faces challenges arising from limited institutional capacity, inadequate

training, and insufficient resourcing of customs enforcement functions. The five-year validity of records under the IPR Rules, while reasonable in principle, requires rights holders to invest in periodic renewals and ongoing engagement with customs authorities. The absence of a simplified destruction procedure equivalent to that available in the EU means that Indian rights holders must frequently pursue formal adjudication proceedings to secure the destruction of confirmed counterfeit goods, adding to the cost and delay of enforcement.

### IX. Recommendations

The following recommendations are advanced to strengthen border enforcement of trademark rights, with particular relevance to the Indian context.

First, customs authorities should invest significantly in specialised training for officers responsible for enforcing intellectual property rights. This must include both the legal framework that controls trademark rights and border enforcement procedures, as well as methods for identifying counterfeit products across luxury items, pharmaceutical products, electronic devices, and automotive components. Engagement with brand owners and industry associations in the design and execution of training programs can ensure that officers are equipped with current, product-specific knowledge.<sup>2100</sup>

Second, the adoption of artificial intelligence-based scanning and counterfeit detection tools should be improved. AI-powered image recognition systems can analyse consignment documents, data, and physical characteristics of goods to flag shipments for detailed examination, enabling customs authorities to allocate their scarce inspection resources more effectively. Machine learning models trained on databases of genuine and counterfeit goods can assist officers in making rapid, accurate determinations, particularly in product

<sup>2098</sup> WCO, INTERPOL, Countering Illicit Trade: A Whole-of-Government Approach (2021).

<sup>2099</sup> EUIPO, 2023 Status Report on IPR Infringement 22 (2023).

<sup>2100</sup>WCO, Customs Guidelines on Integrated Supply Chain Management (2020).

categories where visual inspection alone is insufficient.<sup>2101</sup>

Third, the framework for cooperation between customs authorities and rights holders should be strengthened. Rights holders possess technical knowledge, intelligence on supply chains and distribution networks, and data on counterfeit seizures, all of which are invaluable to customs enforcement. Mechanisms for regularly sharing this intelligence, including databases of known counterfeit sources, supplier profiles, and shipment patterns, can significantly help in ensuring the effectiveness of customs enforcement operations.

Fourth, India should pursue enhanced international intelligence-sharing arrangements with customs authorities in key source and transit countries for counterfeit goods. Agreements, both bilateral and multilateral, on the exchange of enforcement intelligence, based on the frameworks established by the World Customs Organisation and INTERPOL, can enable the interception of counterfeit goods before they reach the ports in India, reducing the burden on domestic enforcement resources.

Fifth, India should consider introducing a simplified destruction procedure for confirmed counterfeit goods, analogous to the system under EU Regulation 608/2013. A procedure like this, where goods may be destroyed upon obtaining the consent of the rights holder and the declarant without engaging in any judicial proceedings, would reduce the time and cost of enforcement, deter repeat offenders, and free up resources for cases where the determination of infringement is genuinely disputed.

## X. Conclusion

Enforcement of trademark rights at the border plays a critical part in the effort to combat the trade of counterfeit goods. The legal frameworks, at the international level through the TRIPS Agreement and at the national level

through statutes such as the Customs Act, 1962 and the IPR (Imported Goods) Enforcement Rules, 2007, provide an effective foundation for customs enforcement. The jurisprudence of courts and tribunals in India and other major jurisdictions has further refined the principles governing the scope and limits of border enforcement powers.

Yet the analysis also reveals that legal frameworks alone are insufficient to ensure effective enforcement in the face of evolving challenges. The significant growth in trade worldwide, the sophistication of counterfeit goods, and the continuous growth of e-commerce channels have strained the capacity of customs authorities worldwide. Failures in coordination within enforcement agencies and insufficient investment in training and technology further undermine the effectiveness of border enforcement regimes.

The central idea of this study, that border enforcement mechanisms play an irreplaceable role in protecting trademark rights and preventing counterfeit goods from entering domestic markets, is supported not only by the analysis of pre-existing legal frameworks but by the recognition that the judicial remedies obtained after counterfeit goods have entered the market are inadequate. The confiscation of a shipment of counterfeit goods at the port of entry is worth more, in practical terms of protecting trademark rights and consumer welfare, than any number of post-hoc judicial determinations.

Customs authorities, therefore, serve as essential gatekeepers in the system of intellectual property rights protection. Their effectiveness is not merely a matter of legal empowerment. However, adequate legal powers are a necessary precondition, but of institutional capacity, technological capability, inter-agency cooperation, and sustained engagement with the rights holders whose trademarks they are charged with protecting.

A modern, effective border enforcement regime requires investment in all of these dimensions.

<sup>2101</sup> Nathalie Piasecki, Artificial Intelligence in Customs Control: Opportunities and Challenges, 53 J. WORLD TRADE 875, 880 (2019).

All the recommendations in this paper, such as enhanced training, AI-based detection tools, stronger cooperation with rights holders, international intelligence-sharing, and procedural reforms, point to a more robust and responsive system of border enforcement that can meet the challenges of 21st-century counterfeiting. The integrity of global trade, the rights of brand owners, and the interests of consumers all depend on achieving this goal.

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