

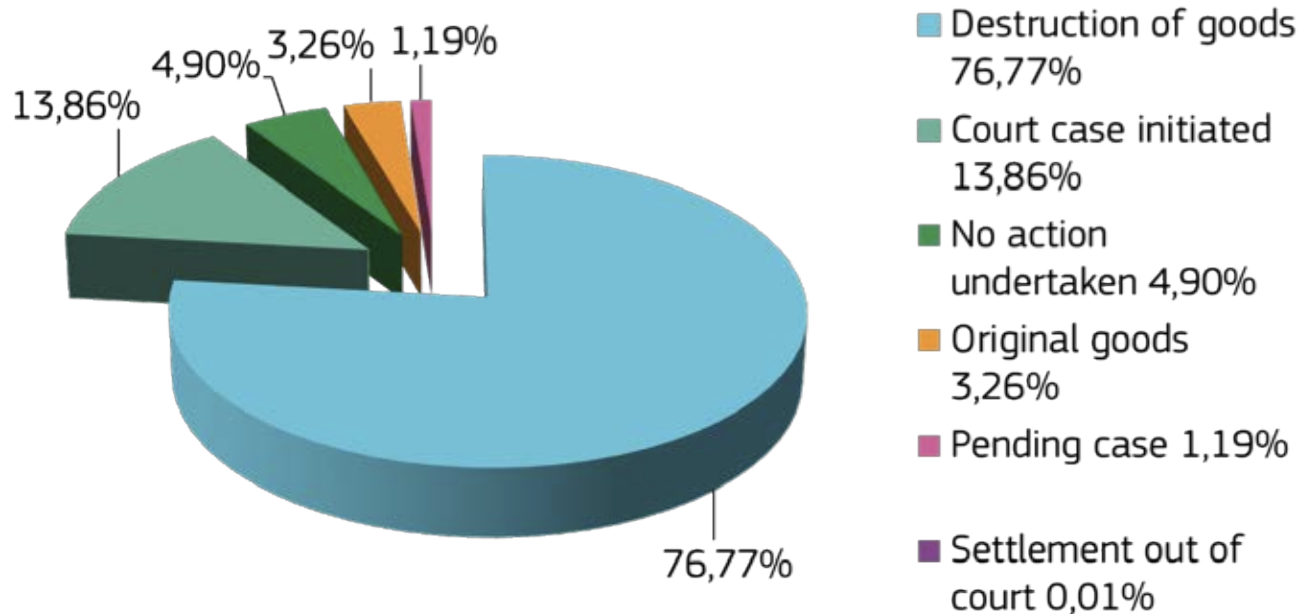


Topic 5: Disposal Orders in terms of Part III of the Agreement on Trade-Related Aspects of Intellectual Property Rights

WIPO-UN ESCAP-UNEP Regional
Workshop on the Environmentally Safe
Disposal of Intellectual Property-Infringing
Goods

Bangkok
November 21-22, 2013

Eun-Joo MIN
Building Respect for IP Division, WIPO



Breakdown of result by cases

Source: “2012 Report on EU customs enforcement of intellectual property rights”

International Legal Framework

- TRIPS Part III - Enforcement of Intellectual Property Rights
 - Section 1: General Obligations (Art. 41)
 - Section 2: Civil and Administrative Procedures and Remedies (Art. 42-49)
 - Section 3: Provisional Measures (Art. 50)
 - Section 4: Special Requirements Related to Border Measures (Art. 51-60)
 - Section 5: Criminal Procedures (Art. 61)

The Context : TRIPS Basic Principles

- Members are free (but not obliged) to implement stricter enforcement procedures and remedies, provided they are TRIPS consistent.
(Art. 1.1)
- Members are free to determine the appropriate method of implementing the provisions within their own legal system and practice.
(Art. 1.1)
- IPR enforcement should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. (Art. 7)

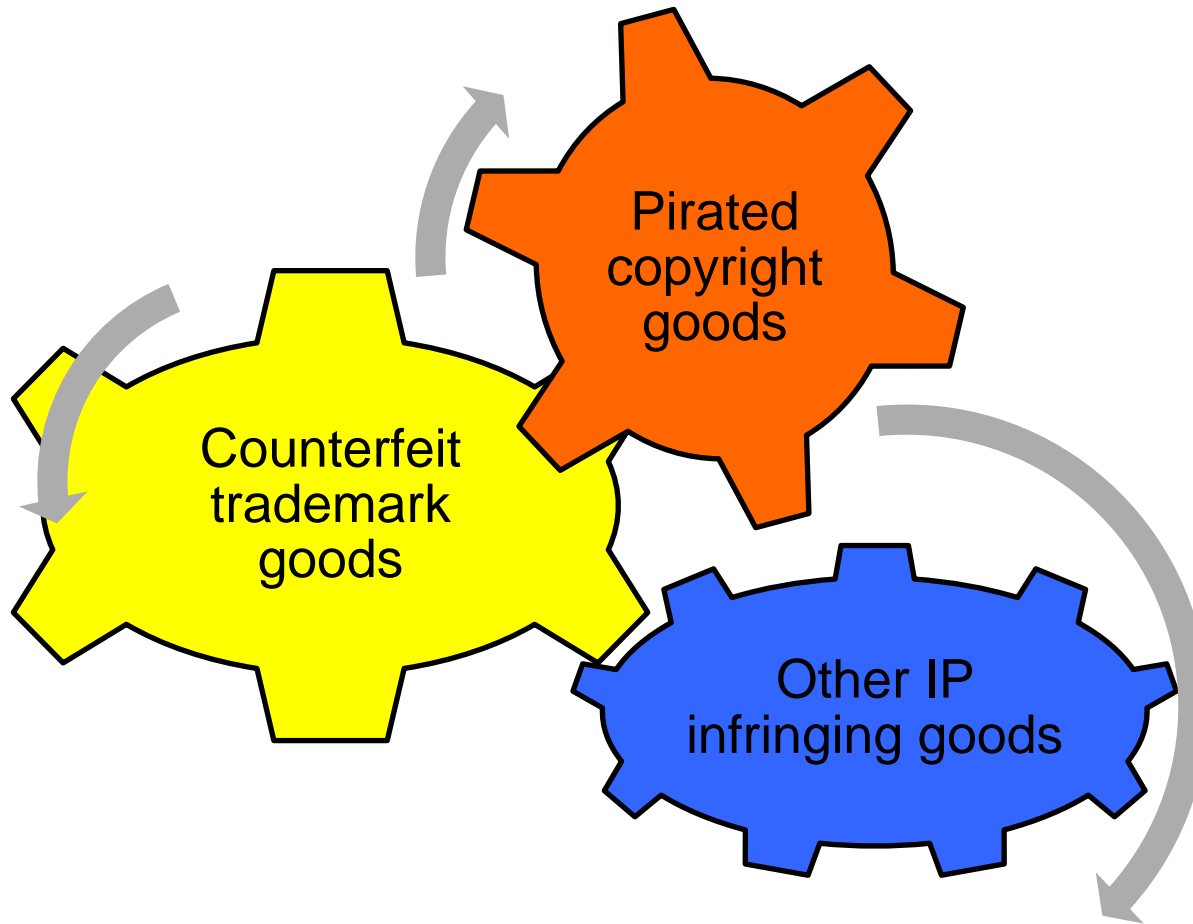
TRIPS Article 41 - General Obligations

- Make available enforcement procedures so as to permit effective action against IPR infringement, including:
 - expeditious remedies to prevent infringements; and
 - remedies which constitute a deterrent to further infringements
- Avoidance of the creation of barriers to trade
- Providing for safeguards against the abuse of such procedures
- Fair and equitable procedures
- Shall not be unnecessarily complicated or costly
- Does not create any obligation to put in place a judicial system for the enforcement of IPR distinct from the enforcement of law in general

TRIPS Article 69 – International Cooperation

- Members agree to **cooperate** with each other with a view to eliminating international trade in goods infringing IP rights. (...) They shall, in particular, promote the **exchange of information and cooperation** between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

IP-Infringing Goods – TRIPS definitions



TRIPS – “counterfeit trademark goods”

- TRIPS Agreement Note 14 (a)
- “any goods, including packaging, bearing **without authorization** a trademark which is **identical** to the trademark **validly registered** in respect of such goods, or which **cannot be distinguished in its essential aspects** from such a trademark, and which **thereby infringes** the rights of the owner of the trademark in question **under the law of the country of importation**”

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https://www.yunbaogao.cn/report/index/report?reportId=5_6182

