



Australian Government

**Australian Customs and
Border Protection Service**

INSTRUCTIONS AND GUIDELINES

File No: 2010/023845

Conducting an Intellectual Property Rights Examination

May 2010

**This Instruction & Guideline refers to Practice Statement: 2008/28
Programmed Cargo Examinations Imports**

Published date: 25 June 2010

Availability: Internal and External

Procedures for conducting an Intellectual Property Rights (IPR) examination

To provide guidance on handling goods suspected of infringing notified Intellectual Property Rights.

Owner: National Director, Cargo Division

Category: Operational Procedure (OP)

Contact: Director Sea Cargo Operations (Vic) 03 9244 8592

The electronic version published on the intranet is the current Instruction and Guideline.

Summary of main points

- Cargo Examinations examine selected incoming cargo consignments to ensure compliance with Customs and Border Protection and allied legislation.
- Detain any infringing goods.
- Report the exam findings to the appropriate issuing officer and Programmer.
- Prompt recording of the examination into the EXAMS II database.

This I&G applies to staff in: Programmed Cargo Examinations.

BCS CLASSIFICATION: Trade facilitation and Compliance/Procedures/Guidelines

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Introduction

Programmed Cargo Examinations Officers examine incoming cargo consignments to ensure compliance with Customs and Border Protection and allied legislation including the Trademark Act 1995 and Copyright Act 1968, collectively known as Intellectual Property Rights (IPR). The majority of IPR examinations are made in response to Examination Advices (EA's) generated by various work areas in Customs and Border Protection. Inspections are for suspected breaches of the Trademark Act 1995 and Copyright Act 1968.

Instructions and Guidelines

Conditions

The following conditions must apply before conducting a cargo examination of suspected Intellectual Property Goods:

1. The goods to be examined must be under Customs control under Section 30 of the *Customs Act 1901*.
2. The inspection of goods is conducted at a Customs controlled area such as a S77G depot or a Section 79 bonded warehouse.
3. The owner/broker or their representative is to be present at the examination. They are responsible for making the cargo available for examination and the opening and re-sealing of packages.
4. Cargo must be made available so that the officers can safely examine it. This includes providing sufficient floor space for the full unpack, examination and storage of cargo.

Resources

Prior to undertaking an IPR examination, Examination Officers should consider what equipment is required to examine the consignment efficiently, effectively and safely. Necessary equipment may include: Knife, digital camera, mobile phone, tape, Custom's seals, empty cardboard boxes, tally sheets, Receipt for goods (B390) book, Cargo report book, first aid kit and Custom's notebook.

All relevant documentation such as; Examination Advice, Import Declaration, invoices and packing lists should also be taken to the examination site.

PROCESS STEPS

Scheduling the Examination

Once it is determined that an examination is required, the owner/broker (or their representative) will schedule an examination time with the Cargo Examinations Programmer. The owner/broker must lodge all relevant documentation, such as: the Examination Advice, a copy of the entry with proof of payment, invoices, packing list, and airway bill or bill of lading.

The Programmer enters the booking information into EXAMS II, prepares an Examiner's Job Sheet to attach to the documents and allocates the job to the appropriate number of officers.

The Programmer must advise the owner/broker in writing of the following;

1. The owner or their representative is to be present at the examination and are responsible for making the cargo available for examination and to provide labour to unload and unpack cargo and open and re-seal packages.
2. Cargo must be made available so that Customs Officers are able to safely examine it. This includes providing labourers to unpack the cargo and sufficient floor-space for the full unpack, examination and storage of the cargo.

Prior to the Examination Officers (EO) must:

- Be clear on the reason for the examination and what it is you are being asked to do. If an officer is in any doubt about the examination they should contact the EA issuing officer for clarification before commencing the job.
- Familiarise themselves with all relevant documentation and check contents and quantities involved in the examination.
- Consider OH&S issues (refer to Instruction & Guideline for Conducting a General Cargo Examination).
- Ensure that adequate labour has been provided by the agent/importer to assist with the task.
- Contact the programmer or initiating officer if adequate labour is not provided.

Conducting an Examination

- Conduct IPR checks as tasked by EA paying particular attention to any registered IPR markings.
- Contact the IPR Officer to verify what particular goods are covered in relation to any possible IP detections they have made ¹.
- No goods to be detained until it is confirmed that the class is covered by a relevant objection ².
- Contact IPR Officer if unsure of IPR status of any detected goods.
- If the examination can not be undertaken (e.g. insufficient unpack labour) contact the Programmer to seek direction on alternative arrangements.

¹ *Some Trade Mark Objections do not cover all items (classes) of goods.. Some Objections may only cover goods in certain classes. For Example, you have a “Dora the Explorer” towel. Dora goods are covered in the following classes 3,14,16, 18, 21 & 25. As towels are covered in Class 24 you would not be able to seize the towel unless the name or image of Dora was covered under a Copyright Notice as well..*

² *In circumstances where a large consignment is detained an attempt to conduct an accurate count should be done in the first instance. In cases where due to the size of the consignment and quantities of the IPR infringing goods it is not practicable to conduct a full count,, the inscription “said to contain” may be used on B390.However a full and accurate count may be required if the detained shipment contains goods covered by several objectors or at a later stage in circumstances where court action is instigated.*

- If a :Programmer is not available contact the Cargo Examination Supervisor.

When Infringing Goods are located.

- Separate IPR infringing goods from non-infringing goods. Group infringing goods by Objector and type to enable quick and easy identification of goods.
- Note quantities, description and registered objectors of all infringing goods. Provide details of any markings or carton numbers on Tallysheet. Tallysheet to be provided to IPR Officer. [A pro-forma Tallysheet is provided at Attachment A]
- Advise supervisor and If the detection meets any requirement of a B513 (Significant Detection), refer to the Instruction & Guideline on Significant Find Reporting Requirements for the Customs Operations Centre (CNOC)
- Take clear photographs of all infringing goods and forward to the examination originating officer. Photographs should include close-ups of any barcodes, labels, tags and batch numbers.
- Complete a Receipt for Goods (B390) in accurate detail, listing the descriptions and totals of the detained goods where practicable.
- Issue a B390 to the owner/broker for goods that are detained
- Ensure the owner or representative signs the B390 prior to you completing the examination and leaving the premise.
- Advise the owner/broker that you will report back to the issuing officer and the consignment will remain “Held” until further notice.
- Apply labels and Customs seals to cartons and add the seal numbers to the Tallysheet. [A pro-forma label is provided at Attachment B].
- Cartons are to be secured inside the ‘Customs cage’ and the transfer and storage of any detained goods should be completed as per regional Detained Goods/Cargo Exams business arrangements.
- Enter job report into Exams II, including details and quantity of Positive Finds. Supply a copy of the documents to the issuing officer and the IPR Officer.
- Enter Job details into your official notebook.

Negative / No detection (i.e. the consignment is compliant with all legislative requirements)

- Advise the owner/broker that you will contact the issuing officer. Do not advise them when the consignment will be cleared; this is for the issuing officer to decide.
- Report the examination findings to the issuing officer and forward them the completed paperwork.
- Advise the IPR Officer of the outcome of the examination.
- Enter job report into EXAMS II database.
- Enter details of the job into your official notebook.

Conducting an examination and count of large consignments involving multiple objectors.

BCS CLASSIFICATION: **Trade facilitation and Compliance/Procedures/Guidelines**

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Background. Often when conducting an examination of a large consignment for suspected IPR infringing goods it becomes apparent that the shipment contains goods in breach of multiple objectors.

At this point it may become necessary to dedicate a team of examination officers to ensure the examination is conducted efficiently. When creating an examination team it is imperative the roles and responsibilities of each team member is clearly defined. This may include individual officers having multiple roles and responsibilities.

Key Roles and Responsibilities

Team Leader

The Team Leader has overall responsibility for:

- The examination team and how the examination is to be conducted. (For example how the goods are to be examined, separated and stacked).
- assigning photography, examining, counting and tally recording tasks.
- liaising with depot staff to ensure that all necessary assistance is provided such as;
 - A fork lift driver to move goods as required and to supply empty pallets for the stacking of both infringing and non-infringing goods;
 - The physical lifting and opening of boxes, bags;
 - Supplying the necessary amount of work space to ensure the Examination Officers are operating in a safe environment.
- Ensuring any detained goods are placed in the 'Customs cage' before leaving the examination area.

Photographer

The Photographer is responsible for:

- ensuring the digital camera is fully charged and functions correctly, that it has sufficient storage capacity or a means to back up large amounts of photographs is available. Consideration should also be given to taking a back up camera and battery.
- Taking photographs as per the instructions in; **When Infringed Goods are located.**
- downloading photographs and saving them in a file created in the regional Cargo Examinations shared drive, in the name of the importer.
- Advising the issuing / IPR officer of the location of the file on the shared drive.

Examination Officer

An Examination Officer is responsible for:

- Examining the cargo and separating it into infringing and non- infringing groups and placing it onto designated pallets.
- Labelling the infringing goods.

Counter

The Counter is responsible for the counting and keeping records of each separate class of goods belonging to each individual objector and relaying these figures to the tally recorder.

Tally Recorder

The Tally Recorder is responsible for ensuring that the numbers of each class of good pertaining to each individual objector is recorded accurately on a Tallysheet. and compiling the B390.

Related Policies and References

Practice Statements:

- Programmed Cargo Examinations (Imports)

Other Instructions & Guidelines

- General Seizure Procedures Trademark Oct 2008.
- General Seizure Procedures Copyright Oct 2008.
- Instruction & Guideline for Significant Find Reporting for the Customs National Operations Centre (CNOOC).

Legislation:

- Customs Act 1901
- Trade Marks Act 1995
- Copyright Act 1968

Consultation

Internal

The following internal stakeholders have been consulted in the development of these Instructions and Guidelines

- Sea Cargo Operations
- Compliance.
- Detained Goods Management
- Trade Policy and Regulation

Approval

Approved on	10 June 2010	
By	Robyn Miller A/g National Director, Cargo	
Review Period	Annually	



Date/...../..... Owner Location.....
QM No. Entry No.....

Box Number	Seal number	Trade Mark	Description of Goods	Count	Time



Attachment B – Label

CARGO EXAMS DETAINED GOODS LABEL

B390 #: _____

QM#: _____

DATE OF DETECTION: _____

DGMS #: _____

OWNER: _____