

IPR Protection

The Role of Japan Customs

Report on IPR Enforcement in 2009



Customs & Tariff Bureau,
Ministry of Finance, Japan

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Key Features of Border Enforcement in Japan

The Japanese government has been enhancing protection of Intellectual Property Rights (IPR) in close cooperation with the private sector, aiming to make Japan an “IPR-oriented nation”. Japan Customs, as the body responsible for border enforcement, is actively working to pursue this goal by constantly improving enforcement techniques and fostering IPR experts.

In Japan’s border enforcement procedures and practices, we particularly emphasize the following features.

Key Features

- 1. Extensive and strong authority at border enforcement***
- 2. Specialized IPR enforcement team***
- 3. Ensuring expertise in cooperation with right holders***
- 4. Fostering experts for IPR enforcement***
- 5. Practical use of information technologies***



1. Extensive and Strong Authority at Border Enforcement

1.1. Scope of Border Enforcement

Japan Customs has extensive and strong authority to ensure border enforcement, which covers both the importation and exportation of infringing goods.

With regard to the scope of IPR, we protect not only trademarks and copyrights but also other IPR such as patents, industrial designs and plant breeder's rights. Furthermore, the Customs law was amended in 2008 to expand the scope of enforcement to transit goods.



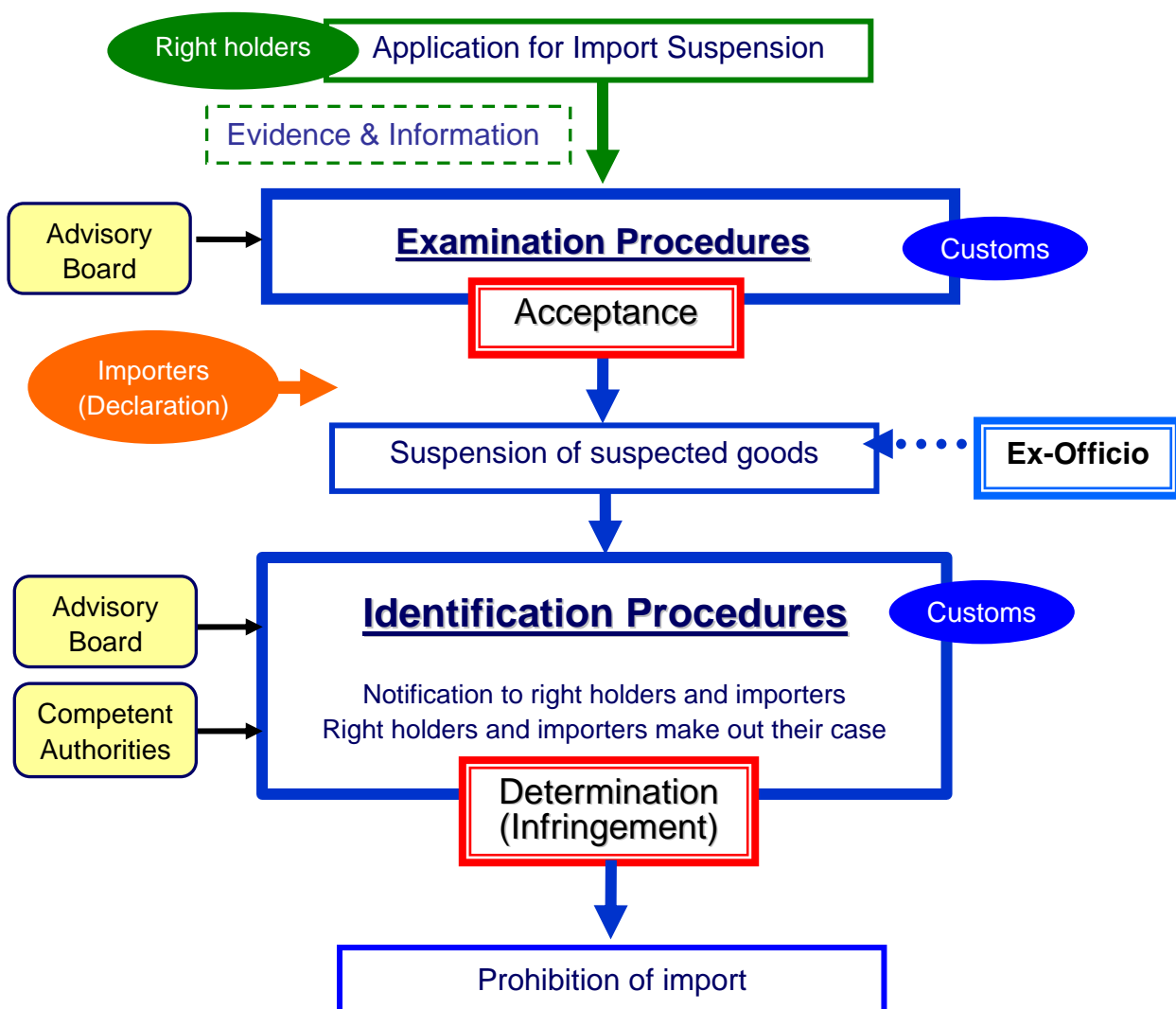
Scope of IPR Protected by Japan Customs

Imports	Trademarks, Copyright and related rights, Patents, Industrial designs, Utility model rights, Layout-design rights , Plant Breeder's rights, Famous indication of goods and configuration of goods (Unfair Competition Prevention Law)
Exports	Trademarks, Copyright and related rights, Patents, Industrial designs, Utility model rights, Plant Breeder's rights, Famous indication of goods and configuration of goods (Unfair Competition Prevention Law)
Transit	Trademarks, Copyright and related rights, Patents, Industrial designs, Utility model rights, Plant Breeder's rights, Famous indication of goods and configuration of goods (Unfair Competition Prevention Law)

1.2. Enforcement Procedures

Japan Customs has authority to suspend the release of suspected goods at the border and make a determination of whether the goods infringe IPR. In order to ensure fair and transparent determinations, Japan Customs conducts elaborate enforcement procedures, as illustrated in the chart below.

Basic Enforcement Procedures (Imports)



(This procedure is applied to procedure for export mutatis mutandis)

1.2.1. Application for Suspension

Right holders may lodge an application directly with Japan Customs to suspend the release of goods suspected of infringing IPR. We confirm the validity of rights and examine whether the evidence is sufficient to prove the infringement. One notable feature of this process is that potential importers/exporters are given opportunities to express their opinions before customs' approval of the application. When we receive such opinions, we hold an Advisory Board of IPR experts and hear their opinions in order to secure transparency in the decision of approval /refusal of the application.

1.2.2. Ex Officio Control

Japan Customs has the power to act ex officio to protect the public interest. Although many suspension cases are initiated on applications lodged by right holders, Japan Customs is empowered to act on its own initiative to suspend the release of suspected goods, when there is *prima facie* evidence of infringement.

1.2.3. Identification Procedures

Japan Customs has the authority to make a determination on IPR infringement in its Identification procedures, without a ruling by other authorities such as courts. During these procedures, we provide right holders and importers/exporters with equal opportunities to submit their opinions and evidence. We make a determination on infringement by carefully examining such opinions and evidence.



1.2.4. Advisory Mechanisms

Taking into account the technical nature of IPR enforcement, Japan Customs consults with an Advisory board consisting of lawyers, patent attorneys and academic scholars of IP laws where necessary. This advisory mechanism is utilized both on the occasion of application examination procedures and identification procedures.

1.2.5. Cooperation with other Government Authorities

Japan customs has been enhancing its cooperative relationship with competent authorities, such as the Japan Patent Office, the Ministry of Agriculture, Forestry and Fishery and the Ministry of Economy, Trade and Industry, to secure the expertise required in identification procedures. Japan customs may consult with these competent authorities on the technical scope of IPR etc. in identification procedures.

1.2.6. Disposition of Confiscated Goods

Japan customs confiscates goods identified as infringing IPR after the period in which interested parties can seek an administrative remedy. The confiscated goods are disposed of properly in the process. Only for the purpose of raising public awareness on IPR, confiscated goods may be used as samples at Customs. All confiscated goods, including goods which have finished their role as samples, are destroyed and disposed of completely, without causing any harm to right holders, under the supervision of Japan Customs.



1.2.7. Penalties

According to the Customs Law, a person who imports or exports goods infringing IPR may be liable to imprisonment for a period not exceeding seven years, and/or a penalty of up to seven million yen. The same levels of penalties are imposed for importing and exporting goods that infringe IPR.



Countermeasures against Items Disguised as Personal Use Items

From the recent increase in small-lot shipments, it is thought that a number of counterfeits and pirated goods are imported as items disguised as being for personal use. In order to address such cases, we have strengthened the enforcement on small-lot importation.

In principle, Japan Customs initiates enforcement exercises regardless of the number of items involved. Due to this tightened enforcement, a considerable amount of counterfeits are suspended at overseas mail sub-branches.

Although enforcement for small-lot shipments has been tightened, the rights and interests of both importers and right holders are also properly secured. Identification procedures, therefore, are carefully designed to secure the balance between the two parties, by providing them with equal opportunities to give their opinions and evidence.

In order to address the increasing number of counterfeits imported by international mail, Japan Customs has strengthened its institutional capacity by forming IPR specialized teams in key overseas mail sub-branches.

Improvement of Border Enforcement

April 2003	<ul style="list-style-type: none"> • Expanded the scope of applications for import suspension to goods that infringe patents, industrial designs and plant breeder's rights • Established procedures for consulting with the Japan Patent Office
April 2004	<ul style="list-style-type: none"> • Established procedures to notify the names of importers to right-holders when initiating identification procedures.
April 2005	<ul style="list-style-type: none"> • Established procedures to allow right holders to take samples and analyze suspended goods in identification procedures • Expanded the scope of Customs enforcement to import goods violating the Unfair Competition Prevention Law (<i>Effective March 2006</i>) • Established procedures for consulting with the Ministry of Agriculture, Forestry and Fisheries (MAFF)
April 2006	<ul style="list-style-type: none"> • Established an IPR advisory mechanism for consulting with appointed IPR experts (e.g. IP lawyers) • Expanded the scope of Customs enforcement to export goods infringing IPRs (<i>Plant Breeder's Rights - effective June 2006/ Patents, Trademarks etc. - effective January 2007</i>).
July 2006	<ul style="list-style-type: none"> • Strengthened enforcement on commercial imports disguised as personal imports
June 2007	<ul style="list-style-type: none"> • Introduced simplified identification procedures
June 2008	<ul style="list-style-type: none"> • Expanded the scope of Customs enforcement to transit goods infringing IPR

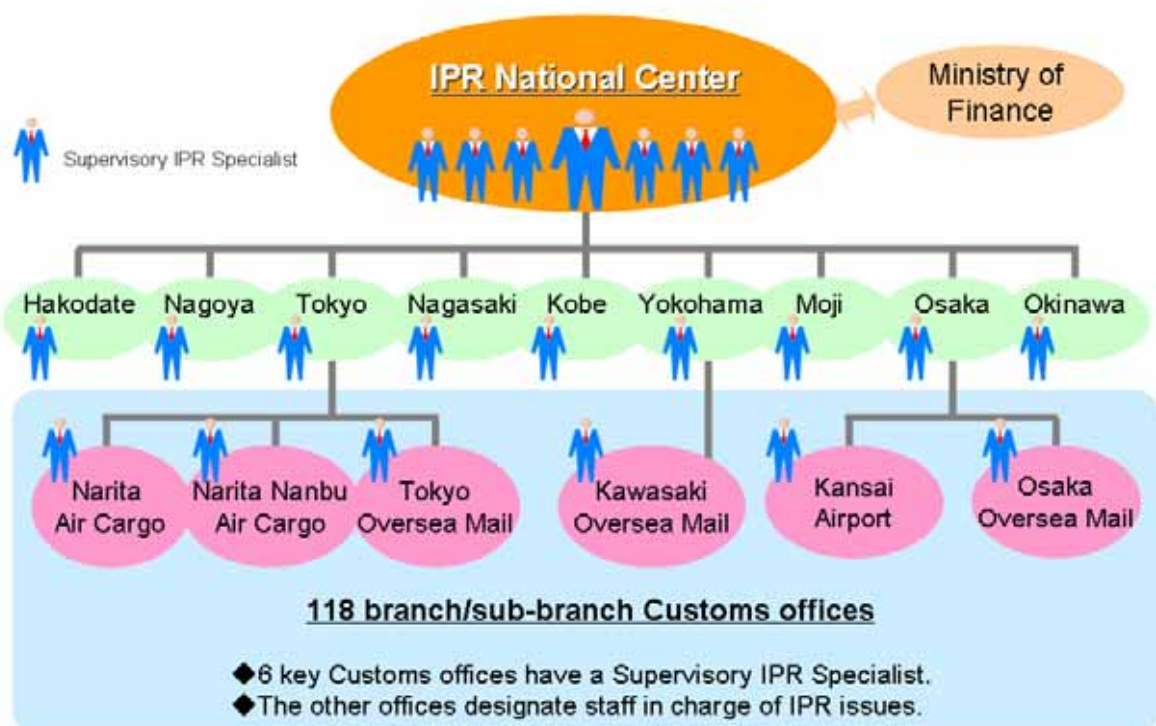
2. Specialized IPR Enforcement Team

To ensure appropriate IPR enforcement based on due process throughout the nation, IPR specialists are allocated to key local branches and sub-branches. At the same time, there is a central body under Tokyo Customs which consolidates knowledge on IPR enforcement and coordinates the work of local IPR specialists.



The body is called the IPR National Center. The Center consists of about 30 members with 8 supervisory IPR specialists who can assist local IPR officers in making determinations based on their knowledge and experience.

Institutional Structure of IPR Enforcement



3. Ensuring Expertise in Cooperation with Right Holders

In order to ensure due border enforcement of IPR, we recognize the importance of close cooperation with right holders.

3.1. Training Seminars for Identifying Infringing Goods

Information provided by right holders is vital in identifying counterfeit goods from genuine products. We invite right holders and hold training seminars for frontline officers. Learning directly from right holders, frontline officers can acquire practical knowledge and techniques to distinguish counterfeit goods.

In 2008, we held more than 140 training seminars in cooperation with right holders.



3.2. Outreach Activities

Japan Customs is conducting outreach activities by visiting right-holders and holding a brief PR sessions. The brochure distributed at these sessions was revised in February 2009.

The brochure explains:

- Applications for suspension
- Identification procedures
- Seizure records
- Types of rights subject to customs enforcement
- Points of contact

Brochure (February 2009 ~)



Raising Public Awareness

Japan Customs is conducting various activities to promote public awareness of the importance of IP protection.

- Posters have been posted at railway stations, airports and government offices
- Magazine advertisements have been made targeting individual consumers of brand goods
- Frequently copied and traded goods are displayed at the Customs' Museum
- Public awareness campaigns are held every year in major port areas

Poster (April 2008 ~)



Magazine Advertising (March 2009 ~)



Public Awareness Campaigns



4. Fostering Experts for IPR Enforcement

Japan Customs conducts a wide range of training to provide knowledge and skills as a means of developing the human resources of Japanese Customs officials. IPR is one of the critical issues covered in training courses. The training scheme is designed and implemented to foster IPR specialists on an annual basis.

4.1. Training conducted by the Customs Training Institute (CTI)

The CTI provides special training courses designed for IPR officials: the IPR theoretical course and the IPR application course. Trainees on the theoretical course learn IPR related laws from academic scholars, officials of other government agencies and private law firms. The application course is conducted by experienced Customs IPR specialists on difficult cases, aiming at fostering core resource persons in IPR.



4.2. Training at the IPR National Center

There are two on-the-job programs at the IPR National Center. One is the short-term OJT, which is designed for those who work in regional Customs offices. Participants take a two-week intensive OJT and deal with actual cases. They learn practical issues from IPR specialists at the IPR National Center. The other type is the long-term OJT which takes a whole year. Those who study in the long term OJT are expected to become core members of IPR enforcement in each regional Customs office.

4.3. Outsourced Training

Training and seminars are also conducted outside of Customs. Commissioned training to dispatch some Customs officials to university provides opportunities for academic research and to study IPR, and we also send officers to workshops organized by private IPR associations every year.

5. Practical Use of Information Technologies



Japan Customs places heavy emphasis on information analysis and information sharing for effective IPR enforcement. For this purpose, Japan Customs uses two different types of information systems.

5.1. CIS

The Customs Intelligence Database System (CIS) is a database with analysis functions that was introduced in 1991. CIS enables Customs officers to extract and analyze various types of trade-related information. Frontline officers can access CIS to check the risk level of cargos which are suspected of containing goods violating IPRs.

5.2. Intranet Bulletin Board System

The Intranet bulletin board system is actively utilized for IPR enforcement activities. The IPR National Center plays a key role in information sharing through the bulletin board and in raising awareness among field officers by providing them with up-to-date information related to IPR enforcement such as:

- A list of all approved applications for suspension;
- A manual for distinguishing infringing goods from genuine products;
- Visual information of recent seizures;
- Seizure records;
- Customs related laws and IPR related laws;

Since IPR border enforcement requires field officers to gather necessary information on a timely basis, the bulletin board system is effective in providing support to field officers to enable them to implement effective and appropriate IPR enforcement.



Promotion of International Cooperation

Promotion of international cooperation among customs authorities is actively discussed to prevent the proliferation of counterfeit goods and piracy in the international arena.

Recognizing the critical importance of unifying international efforts, Japan is playing a key role in developing cooperation with other Customs authorities at both global and regional levels.

1. Cooperation under the WCO Framework

Japan Customs has been actively seeking ways to tackle challenges of enforcement, such as recent trends of diversity and complexity, and smuggling by sophisticated methods of concealment, in various international frameworks. The World Customs Organization (WCO) is one of the key organizations in which customs administrations can share best practices in IPR enforcement.

Customs Cooperation Fund Specializing in IPR Protection

Capacity building is one of the most effective building blocks for firm IPR enforcement at customs. Japan is making a financial contribution to the WCO's "Customs Cooperation Fund (CCF/IPR)" for capacity building activities to enable efficient IPR protection among WCO members. This fund is especially designed to enhance the capacity of IPR enforcement through the following activities.

Regional Seminars

WCO Regional seminars on IPR aim at sharing and recognizing the current situation and issues of regional member administrations, such as organizational infrastructure and risk management. In addition, members are expected to enhance partnerships among them and with related parties such as right holders.

Expert Missions (Diagnostic missions/ Technical assistance missions)

In diagnostic missions, experts on IPR visit WCO member's customs administrations to assess the current situation of their IPR enforcement and their need for technical assistance. Diagnostic missions are followed up by technical assistance missions by experts.

Workshops for Trainers

Participants in workshops are expected to play roles as leaders in their administrations to disseminate the expertise they have gained in the workshops, and as core members of future IPR capacity building activities conducted by the WCO.

The WCO Regional Workshop in Kashiwa

In October 2008, the WCO Regional Workshop on “The Fight against Counterfeiting and Piracy” was held at the Customs Training Institute, one of the WCO’s Regional Training Centers for the Asia Pacific Region. About 30 participants and observers from the region joined the workshop and shared their views on the challenges and best practices of the WCO and other countries in IPR enforcement. The participants also reaffirmed the importance of close communication and information sharing among members and stakeholders.



The Diagnostic Mission to Vietnam Customs

The WCO conducted a diagnostic study at Vietnam Customs in May 2008. The diagnostic study was to recognize the current situation and issues and seek a way to move forward toward better IPR enforcement. A WCO team, including two officials from Japan Customs, visited Vietnam Customs and exchanged opinions. A technical assistance mission is to be sent as a follow-up based on the diagnosis.

2. Japan - China - Korea Tripartite Customs Heads' Meeting and WG on IPR

The Customs heads of Japan, China and Korea held the first Tripartite Meeting in April 2007 in Tokyo, Japan, where IPR enforcement was one of the highlighted issues, among various other customs issues. They shared the view that proper IPR protection is indispensable for sound economic development and agreed to set up a working group on IPR enforcement.

Following the top level agreement, the first Tripartite IPR Working Group was held in Tokyo, Japan in October 2007. One of the important outcomes from the working group was an introduction of an Action Plan called “Fake Zero Project” for cooperative enforcement action among the three Customs administrations. An information exchange scheme, proposed in the Plan, is now contributing to sharing information on high-risk traders among the three Customs administrations.

The second Tripartite IPR Working Group was held in Seoul, Korea in November 2008, and successively, the second Tripartite Customs Heads' Meeting was held in Jeju, Korea, in the same month. The Customs heads were briefed on the progress made by the IPR Working Group, and, based on the progress, they consented to reinforce information exchange and public awareness activities related to IPR enforcement and agreed that the three Customs administrations should work closely to hold an IPR seminar in cooperation with the WCO.



FAKE ZERO PROJECT

China Customs · Japan Customs · Korea Customs

**Main points of Action Plan
(The first Tripartite WG on IPR)**

1. Facilitation of general information exchange
 - Information exchange on recent trends and suspension records
2. Facilitation of specific information exchange
 - Information exchange on specific cases of IPR infringement
3. Mutual understanding of legislation and operations
 - Mutual notification of legislative amendments
4. Improvement of public awareness and relations with right holders

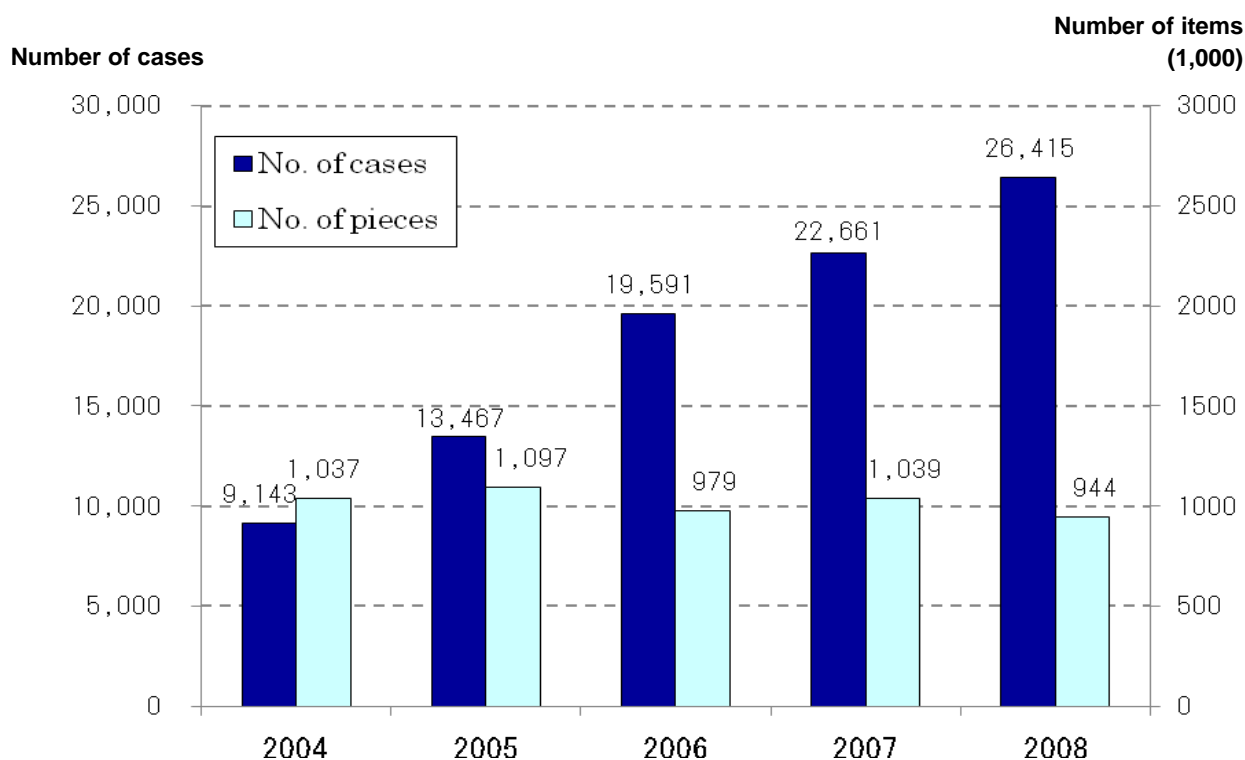
3. G8 Intellectual Property Experts' Group (IPEG)

At the G8 Hokkaido Toyako Summit of July 2008, members reaffirmed that effective promotion and protection of IPR are critical to the development of creative products, technologies and economies. The G8 Intellectual Property Experts' Group (IPEG) discussed concrete measures to combat counterfeiting and piracy and the discussion results were reported to the G8 leaders. A project to "Increase cooperation and coordination among national customs and border enforcement administrations" was, among others, proposed in the G8 IPEG Meeting. Members aim to strengthen cooperation among customs and other border enforcement administrations with this project.

Japan Customs chaired the Follow up Meeting of G8 IPEG for Customs Issues held in Berlin, Germany, in December 2008. Delegates discussed how to further promote the implementation of the project proposed in the G8 IPEG Meeting.



1. The Number of Import Suspensions (2004-2008)



2. The Number of Suspensions by Type of Rights (2004-2008)

		2004	2005	2006	2007	2008	
Patents	Cases	80	66	26	15	27	0.1%
	Items	107,600	46,906	67,211	20,787	69,472	7.4%
Designs	Cases	39	42	54	54	80	0.3%
	Items	62,794	107,294	58,977	90,040	91,472	9.7%
Trademarks	Cases	8,922	13,228	19,363	22,447	26,140	98.7%
	Items	690,749	816,845	784,591	877,895	685,529	72.6%
Copyright	Cases	119	174	198	214	226	0.9%
	Items	174,594	120,991	63,540	50,636	97,487	10.3%

3. The Number of Suspensions by Type of Commodities (Cases) (2004-2008)

	2004	2005	2006	2007	2008	
Bags	6,420	10,158	15,327	16,959	19,793	60.6%
Key cases	1,104	2,036	3,268	2,476	2,853	8.7%
Watches	1,252	1,108	1,462	1,699	2,477	7.6%
Apparel	1,122	1,615	2,160	2,656	2,178	6.7%
Belts	272	503	704	883	1,097	3.4%
Shoes	357	475	928	1,151	1,071	3.3%
Pharmaceutical	0	0	11	102	501	1.5%
Mobile-Phones and accessories	442	472	513	289	471	1.4%
Stationery	292	351	400	320	381	1.2%
Accessories	229	381	393	379	337	1.0%
Others	1,309	1,888	1,877	1,530	1,506	4.6%
Total	9,143	13,467	19,591	22,661	26,415	100%

4. The Number of Suspensions by Type of Commodities (Items) (2004-2008)

	2004	2005	2006	2007	2008	
Bags	164,939	253,327	283,201	259,377	140,560	14.9%
Accessories of apparel	64,976	78,678	77,441	102,358	132,810	14.1%
Tobacco and Smoking implements	4,180	6,131	7,643	3,619	98,611	10.4%
Pharmaceutical	0	0	4,213	96,591	94,684	10.0%
Apparel	211,094	176,862	171,681	80,915	81,288	8.6%
Shoes	29,210	25,953	23,451	48,325	51,504	5.5%
Computer accessories	74,738	33,941	52,083	4,797	40,780	4.3%
Key cases	63,191	34,265	49,418	36,431	35,696	3.8%
CD, Record	535	50,160	2,254	1,468	34,624	3.7%
Mobile-Phones and accessories	104,616	77,702	28,653	20,939	26,730	2.8%
Others	319,518	360,381	279,186	384,538	206,754	21.9%
Total	1,036,997	1,097,400	979,224	1,039,358	944,041	100%

5. The Number of Suspensions by Source Country (Cases) (2004-2008)

	2004	2005	2006	2007	2008	
People's Republic of China	3,358	6,278	9,440	16,116	21,529	81.5%
Republic of Korea	4,598	6,045	8,720	4,527	3,287	12.4%
Hong Kong, China	423	369	424	735	660	2.5%
Thailand	220	272	343	572	356	1.3%
The Philippines	387	365	445	472	308	1.2%
The United States of America	30	38	52	37	62	0.2%
Vietnam	15	15	44	51	32	0.1%
Chinese Taipei	33	21	20	28	31	0.1%
Malaysia	26	8	14	17	27	0.1%
Indonesia	8	9	10	22	16	0.1%
Brazil	1	4	0	8	16	0.1%
Others	44	43	79	76	91	0.3%
Total	9,143	13,467	19,591	22,661	26,415	100%

6. The Number of Suspensions by Source Country (Items) (2004-2008)

	2004	2005	2006	2007	2008	
People's Republic of China	434,980	448,680	452,216	694,299	699,533	74.1%
Republic of Korea	381,371	458,143	384,173	165,180	109,490	11.6%
Hong Kong, China	142,414	91,223	68,727	107,950	37,836	4.0%
Chinese Taipei	5,846	3,380	587	1,506	37,136	3.9%
The Philippines	37,840	40,974	33,187	24,531	22,177	2.3%
Thailand	13,939	25,633	27,798	20,527	21,332	2.3%
Vietnam	1,316	616	5,693	17,022	7,548	0.8%
The United States of America	3,702	2,057	2,987	476	2,038	0.2%
Pakistan	0	5	0	2,499	1,589	0.2%
Macao	2,323	2	2	7	1,433	0.2%
Others	13,266	26,687	3,854	5,361	3,929	0.4%
Total	1,036,997	1,097,400	979,224	1,039,358	944,041	100%

7. The Number of Suspensions by Mode of Import (2008)

	Cases		Items	
General Cargo	777	(2.9%)	446,927	(47.3%)
Postal Items	25,638	(97.1%)	497,114	(52.7%)

8. The Number of Valid Applications for Suspension (as of January 2009)

Patents	17
Utility-model rights	0
Industrial designs	54
Trademarks	146
Copyrights	40
Copyright related rights	427
Plant breeder's rights	1
Unfair competition prevention law	5
Total	690

9. Total Value of Suspensions by Source Country

	2008 (billion yen)	%
People's Republic of China	11.1	53.9%
Republic of Korea	5.8	28.3%
Hong Kong, China	2.2	10.8%
The Philippines	0.5	2.5%
Thailand	0.5	2.3%
Vietnam	0.3	1.7%
Others	0.1	0.5%
Total	20.6	100.0%

10. Significant Interdictions in 2008

【Fake Pharmaceuticals Smuggled by Express Mail Service】

Nagoya Customs accused Japanese males who attempted to smuggle 5,000 fake tablets in violation of Customs Law. The tablets, which violate the trademark rights and patent rights of pharmaceutical firms, were smuggled from China using the Express Mail Service



【Fake Pachinko Prizes Carried by Air-passengers】

Tokyo Customs Narita Airport Branch interdicted 7,000 items of fake *pachinko* prizes. These plated gold imitation *pachinko* prizes, violated the design rights of a *pachinko* association and also carried counterfeit trademarks. The Korean males who smuggled the items in their luggage from China were accused of violation of Customs Law.



【Pirated DVDs Smuggled in Postal Parcel】



Kobe Customs interdicted 500 pirated DVDs in postal parcels from China which infringed Copyrights. A Japanese male was accused of violation of Customs Law by Tokyo customs.



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