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ROUSE



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China-Southeast Asia Anti-Counterfeiting Project Summary Report

1. Introduction

The UK Intellectual Property Office (UK IPO) and Foreign & Commonwealth Office jointly engaged British IP firm Rouse (www.rouse.com) to study the cross border trade in counterfeit goods between China and Southeast Asia (SEA), focusing on a range of British branded consumer goods and industries. The study involved original research, Rouse's own experience and interviews with a number of British companies. This report presents the main findings of the study and a number of recommendations for action by governments and brand owners.

2. China-Southeast Asia counterfeit trade

China is the dominant manufacturing force in the global economy with an advanced export infrastructure. Various data sources ¹ show that the majority of the world's counterfeit goods are exported from China. This undermines the competitiveness of British companies in markets around the world. SEA is a region of growing economic importance both globally and to British companies. It is in the process of forming a new trading bloc (the ASEAN Economic Community). Yet many British companies report that many of goods sold there are counterfeit.

British companies surveyed estimate the scale of counterfeiting in SEA as 5-40% of the total market (based on their internal estimates and market surveys). The majority of counterfeits in SEA are imported from China (with exceptions for lubricants and apparel which have more SEA local production). One British company noted that China Customs seizures of goods destined for South East Asia in recent years were 11-18% of their total China seizures to all world-wide destinations. However precise calculations are difficult and generalisations across industries are of limited practical value. The real picture is more complex, for example some locally produced fake lubricants and alcoholic beverages are distributed in packaging which comes from from China.

¹ For example: http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm as well as <https://www.cbp.gov/trade/priority-issues/ipr/statistics> and the UN Office on Drugs and Crime report - "Transnational Organized Crime in East Asia and the Pacific".

A. Sea Freight, Air Freight and Customs Enforcement

The main routes for counterfeit goods flowing between China and SEA are listed in Annex 1 of this report. This research shows that large volume items like personal and household care products are shipped by sea freight around the world from China's Eastern and Southern ports (such as Ningbo or Guangzhou). Hong Kong is a transshipment hub used by counterfeiters to tranship goods, thereby hiding their China origin. High quality packaging components are often sent to SEA for assembly. Small volume postal shipments (especially internet orders) are shipped from China worldwide - especially luxury goods and other smaller counterfeit items.

China intercepts huge numbers of counterfeit exports (27,000 seizures in 2014²), through a relatively efficient customs IP border protection system. However the scale of the counterfeiting problem means that this is only the tip of the export iceberg. Most counterfeit exports do in fact get through. Brand owners consistently say that China needs to require greater exporter transparency and information disclosure then collect and share more information about the sources of fakes, in a more collaborative way with brand owners.

Hong Kong's Customs & Excise are relatively efficient but could take a more proactive collaborative approach to working with brand owners to stop the transshipment of fakes through the city. A clearer Hong Kong government policy on this is needed.

SEA's Customs IP border protections are not as effective as they could be although Thailand has now begun to conduct meaningful numbers of seizures (809 in 2014). By comparison most other SEA countries intercept very few counterfeit goods at their ports. Several issues make border controls difficult, not the least smuggling and corruption which are serious barriers to SEA Custom's effectiveness. So too are inaccessible Free Trade Zones. Transparency of data on Customs activities is a further concern for brand owners. Singapore is a transshipment hub for many illicit goods including counterfeits.

B. Overland smuggling and inland/domestic enforcement

The land borders between Vietnam and Myanmar and China are very hard to police, with Vietnam and Myanmar Customs finding it extremely hard to undertake any inspections and seizures. Smuggling appears rife and many counterfeits are hand carried or sent by river bypassing border inspections altogether. Since the IP issues are part of a wider set of problems around these borders, the IP industry and the local customs authorities cannot solve these problems alone. A joint effort by the governments of China, Vietnam and Myanmar would be needed to address the wider economic issues that cause large scale illegal activities at these borders.

On the whole, the legal systems in SEA which support IP enforcement are not strong enough to have a meaningful deterrent effect. There is often also a problem of corruption. Sometimes SEA enforcement officials express concern that the counterfeiting problem comes from China. Thailand does have a relatively efficient

² <http://www.customs.gov.cn/publish/portal0/tab2559/module5491/info739906.htm>

criminal IP enforcement system, although there are concerns over too many low penalties. The Philippines has very recently undertaken an overhaul of its criminal enforcement system. In Indonesia very few criminal IP cases happen yet.

3. Results and Conclusions

In most developing Asian markets counterfeiting is a subset of a business environment where many minor illegalities are common. For example businesses are not properly licensed or declaring/paying taxes properly. Counterfeiting is regarded as just another similar minor infraction. It can therefore be regarded in part as a developmental issue.

In SEA, counterfeits (both from China and local production/assembly) are a market entry cost for foreign investors. Few British companies have large resources in SEA dedicated to IP protection and enforcement. Very large companies must spend significant amounts dealing with counterfeits. Smaller and newer British investors suffer from lack of information, resources and ability to handle the problem.

Steps brand owners should take include:

- work with China Customs to record brands for counterfeit export seizures and provide training
- gather data and information on the scale of their counterfeit problems in SEA, using IP enforcement databases
- record the barriers and difficulties in undertaking enforcement and information to UKIPO officers in China and SEA
- press industry organizations to join in IP lobbying efforts, encourage more regional and UK based IP events, and take part in more detailed economic impact studies

China also needs to do more to prevent the flood of counterfeits and the damage it does to SEA economies. The British and other foreign governments already have substantial engagement on IP in China. But the scale of the problem is not diminishing despite the Chinese government's efforts.

SEA governments need to take bolder steps to address the damage that counterfeit imports do to their economies. The ASEAN group (and AEC once established) needs to recognise the problem so it can take steps to address the escalating harm it causes. ASEAN needs assistance developing policies, priorities and goals around the issue. The British government has begun an engagement process with ASEAN and this will hopefully continue and expand.

4. Recommendations

It is recommended that the British government continue work on a number of areas to support British companies and its trading partners in China and SEA. These include:

- Support for British companies, providing resources in China, SEA and UK, providing research, tools and assistance.
- Working with China to improve its IP border protection and inland enforcement resources, including the provinces with land borders with SEA.
- Working with SEA countries to kick start IP border protection in the major SEA economies (Indonesia, Philippines, Vietnam and Myanmar are priorities) and inland enforcement systems to create better functioning IP enforcement systems.
- Working with Singapore and Hong Kong to address the transshipment problem.
- Working with ASEAN and the AEC to help initiate new IP enforcement policies and strategies.

5. Annexes to this report

1. Summary of the major counterfeit goods routes from China to SEA countries.
2. Summary of SEA customs remedies.
3. Detailed Recommendations. These include general recommendations for the British government and British companies and specific recommendations relating to each country and for ASEAN.

Annex 1:

Summary of main counterfeit goods trade routes from China to SEA countries:

- Overland via China's Guangxi and Yunnan province borders, into Myanmar and Vietnam, as well as Laos, for onward transport to Thailand. Corruption and smuggling all along this border is rife. Some goods pass by road through legitimate border posts, but many are carried into Vietnam (and perhaps Myanmar through tribal areas) in small quantities, sometimes larger volumes broken into small boxes. Many cross through back country tracks, hand carried by passengers, or across small rivers.
- By ship especially from China's eastern seaboard ports like Ningbo and Shanghai, and the southern ports of Guangzhou, Shenzhen and Xiamen.
- A great deal is shipped through Hong Kong, arriving in Hong Kong from China by river or road.
- The major sea ports in SEA countries are the primary entry points for shipped containers containing counterfeits. The major ones are Manila in the Philippines, Haiphong and Saigon in Vietnam, the Thai ports of Laem Chabang and Bangkok, Port Klang in Malaysia and Indonesia's ports of Jakarta and Surabaya in Java and Medan in Sumatra.
- Singapore is the largest transshipment hub for counterfeits in SEA, possibly the world.
- A huge volume of small postal shipments leave China to all over the world. This is especially a problem for small items, like luxury goods, or internet orders. In the pharma industry, small volume shipments have long been common and are rarely detected by Customs. Postal shipments of counterfeits are rapidly growing due to increasing volume of internet sales. Some counterfeits are hand carried into HK and carried by passengers to SEA by plane.
- Other concerns include inaccessible SEA Free Trade Zones, as well as the ports of Port Klang in Malaysia, also a transshipment hub, and Batam in Indonesia, with its supporting role to Singapore.

Annex 2:

Summary of Customs systems in SEA

Below is a table of the relevant SEA countries and a summary of the relative effectiveness of their border control procedures.

Country	Recordal system?	No. of marks recorded	Numbers of Customs seizures p.a.	Imports / exports / transit goods seized?	Notes
Myanmar	No	0	10-20	Imports	Myanmar has only recently started to build a modern IP system.
Thailand	Yes	944 shown in their online database	809 (in 2014)	Imports, exports and transhipped goods	Thai seizures have increased in recent years.
Vietnam	Yes	Estimated around 60 marks are recorded as at mid-2015.	A handful of cases only occur each year. No official data is published. Sometimes Customs tip off other authorities to enable inland seizures.	Imports	The majority of fake goods from China are believed to come through the northern land border. Many are smuggled without passing Customs, often in small volume hand carried shipments are aggregated at Chinese traders inside Vietnam.
Philippines	Yes	47 marks as at mid 2015	12 Customs seizures in 2014	Imports	Until 2014 few border seizures occurred, only seizures inland. Some actual border seizures took place in 2014, leading to a hope of improvement.
Indonesia	No (proposed rules being drafted)	No	0	n/a	A Supreme Court regulation requires civil action to initiate Customs seizures rendering the system ineffective. A new regulation on ex officio procedures is being drafted.
Singapore	No	No	A handful of cases per year.	Imports	Since there is no recordal system in place, Singapore Customs need information on a specific shipment provided by the rights owner before taking action.

Country	Recordal system?	No. of marks recorded	Numbers of Customs seizures p.a.	Imports / exports / transit goods seized?	Notes
Malaysia	No official recordal system	0	A handful of cases per year, but no official data is published. Often Malaysian Customs will either tip off or hand over the matters to the Ministry of Domestic Trade, Cooperatives and Consume Affairs to enable inland seizures and/or prosecution.	Imports only	Since there is no recordal system in place, the Malaysian Customs will require information on a specific shipment provided by the rights owner before taking action. An application will have to be lodged at the Trade Marks Registry by the rights owner, which upon approval, will then be transferred to Customs for Custom's further action.

Annex 3:

Detailed Recommendations:

No	Recommendation	Priority (S/M/L)
1	An internal UK government policy should be established in relation to each of the issues set out below, or to selected issues, and a decision taken as to what, if any, action can and should be taken, led by IP attaches in China and SEA with support from the UK.	S
2	The development of a Best Practice Manual for UK brand owners engaging with China Customs and other law enforcement agencies; to help them make the most of a large and already well-functioning system.	S
3	The compilation of an anti-counterfeiting manual (perhaps on the basis of material contained in this report) for UK companies operating in SEA, along with a specific process for reaching out to mid-sized UK corporations who have the least resources yet are already affected by the problem of counterfeits from China. This should include information on how infringement variances are driven by the local market, market structure, business forms (i.e. distributor vs. wholly owned operations) cultural differences, income and consumer behaviour in each country.	S
4	The organisation of a regional symposium (or joining another existing one) to bring together as many interested parties as possible to discuss the issues raised in this report. Pushing the discussion into the public domain in this way would help clarify the issues and could also be instrumental in effecting change.	S
5	A study of the issue of the export of packaging components and unbranded products is required. A vast trade in these exists in many industry sectors as large as the finished counterfeit goods trade. At present these fall through the cracks of law enforcement and Customs, because they are not finished counterfeit goods. Ideally these should be treated as prima facie the tools for committing acts of criminal trade mark infringement and not allowed through because trade marks do not cover those elements, or the components are not branded.	M
6	More brand owners need to adopt technology to capture information on IPR enforcement (e.g. enforcement databases) in Asia to develop more detailed analysis and solutions.	M
7	Smaller UK companies need extra resources and support especially on the ground in Asia to assist their headquarters understanding the issues and solutions.	M
8	A further study could relate to the economic impact of fakes in SEA, either on local economies or on UK companies or both. There is already some data available for study. This could then describe the exact levels of damage to SEA economies. The EU Chamber Of Commerce in Singapore is studying the transshipment of illicit goods through Singapore already.	M
9	Some level of engagement with postal and courier companies to work on joint initiatives to deal with the huge volumes of small shipments is needed. Possibly this needs to connect to the development of E-commerce systems in Asia more generally. Other organisations are already looking into this, so working with others could be the best solution.	M

Summary of particular issues and problems that exist in each country and how they might be addressed

China & Hong Kong

China

No	Recommendation	Priority (S/M/L)
1	Chinese sea ports need improved counterfeit goods detection technology and improved risk assessment techniques in order to drive up seizure numbers.	M
2	China needs to develop far better systems for collecting shipping information and data collection analysis (to prevent false declarations and hidden export companies). A separate related issue is then creating a structure with appropriate legal protections to share this with IP holders transparently in a shared attempt to stop the problem.	M
3	The Chinese government needs to address the vast scale of illegal activity on its southern land borders, currently supporting criminality on both sides of the border. This may need specific agreements and cooperation with Vietnam, Myanmar and Laos.	L
4	China needs to address the vast scale of the postal shipment of fake goods throughout the world from its cities, especially through Internet ordering.	M
5	China needs to improve its administrative enforcement system. A vast quick raid and fine based system has proven largely ineffective at stopping counterfeiting. The fines are to use common industry parlance just 'a cost of doing business'. A starting point could be a significant increase in fines, so that they become meaningful for counterfeiters.	M
6	China needs to drop its prohibitive criminal thresholds and put far more case through the criminal system and actively promote this to ensure a better deterrent effect. The number of criminal trials are miniscule relative to the volume of counterfeiting, such that the present level of criminal enforcement is no deterrent.	M
7	China needs to address the larger issue of which counterfeiting is a subset. This wider issue is the ease with which businesses can operate on the margins and in the shadows, engaging in a variety of grey area/illegal activities from tax avoidance, misdeclarations and borrowed business licences, to smuggling. Either China has to embark on a massive process to more effectively regulate business activities to drive out the vast array of illegalities which are so common, or put in place proper levels of deterrent penalties to prevent counterfeiting (and the many other common business illegalities). This means much higher administrative fines and doubling or tripling of criminal cases, and many more served prison sentences for business crimes like counterfeiting.	L

Hong Kong

No	Recommendation	Priority (S/M/L)
1	Hong Kong needs to clarify its role in transshipment of fakes. A discussion and policy review is needed to create clarity on whether the Hong Kong government intends to address this specifically. A discussion with the Hong Kong government is needed and a clear statement.	S
2	Hong Kong Customs needs improved powers, better counterfeit goods detection means, making use of the latest technology, and improved risk assessment techniques in order to drive up seizures of transhipped goods entering by land and sea from China or exiting via its port.	M

SEA countries

Vietnam

No	Recommendation	Priority (S/M/L)
1	Inland law enforcement improvements are needed to make anti-counterfeiting enforcement easier, simpler, faster and with criminal deterrent penalties. This means simplifying and making faster administrative enforcement and enabling far more cases to be transferred into the criminal system, with many more deterrent penalties than at present (running into thousands then tens of thousands over time).	M
2	The Vietnam government needs to improve the effectiveness of its Customs IP border protection system generally to attract more IP holder records and make more border seizures. This means putting in place an effective transparent recordal and seizure system and making thousands of seizures per year.	M
3	Specific sea port improvements in technological solutions and improved risk assessment techniques could drive up seizure numbers at these major import points.	M
4	The northern land border is a massive problem to solve, since it involves smuggling, corruption, unpatrolled borders, criminal gangs, Chinese trade networks, local population collusion, and many more problems. A Vietnam government policy is needed to modernize and improve the region over a very longer period (say a decade). The Vietnam government needs to agree with the Chinese government on a joint policy to address the northern border smuggling problem, which leads to large scale criminal activity in northern Vietnam.	L

Myanmar

No	Recommendation	Priority (S/M/L)
1	Given how early it is in Myanmar's development a starting point would be a clear agreed plan on how to address this issue of counterfeiting generally. Such a plan would include the development of IP laws (still not enacted); inland law enforcement capability; and a Customs IP border protection system. An MOU could be signed with the government.	S
2	The northern land border is a massive problem, involving, among other things, smuggling, corruption, and the operation of criminal gangs including Chinese trade networks. A longer-term government policy is needed to modernise and improve the region over a period of, say, ten years, with agreements and cooperation with China.	L

Philippines

No	Recommendation	Priority (S/M/L)
1	The Philippines government needs to improve the effectiveness of its Customs IP border protection system generally to attract more IP holder recordals and make more border seizures. This means putting in place an effective transparent recordal and seizure system and making thousands of seizures per year.	M
2	Corruption and smuggling need to be specifically addressed for Customs to be able to work more effectively.	L
3	Inland law enforcement improvements are needed to make anti-counterfeiting enforcement easier. Specific improvements are needed to make NBI and police raids faster and simpler. The NCIPR is already far down the road of working on this and the UK government should work to help continue these improvements. What needs more work is the post raid DOJ investigations and faster criminal prosecutions with more significant criminal deterrent penalties.	M

Indonesia

No	Recommendation	Priority (S/M/L)
1	The Indonesian government needs to create and implement a Customs IP border protection system to attract IP holder records and make regular and increasing numbers of border seizures. This means putting in place an effective transparent recordal and seizure system and making thousands of seizures per year.	S
2	Corruption and smuggling need to be specifically addressed for Customs to be able to work more effectively.	L
3.	Inland law enforcement improvements are needed to make anti-counterfeiting enforcement easier. Specific improvements are needed to enable police and PPNS to take place transparently and effectively. Then at least some cases must move into prosecution phase and criminal trials for IP crimes must take place, significant criminal deterrent penalties. Corruption in the criminal justice system needs to be specifically addressed.	L

Singapore

No	Recommendation	Priority (S/M/L)
1	Singapore needs to demonstrate leadership in SEA and address its huge role in transshipment. This must be done first on a policy basis - setting a zero tolerance for the use of Singapore as a transshipment hub for illegal goods.	S
2	Singapore Customs then need improved powers, money and resources to enable better counterfeit goods detection means using technological solutions and improved risk assessment techniques in order to drive up seizures of transhipped goods.	M

ASEAN / SEA regional issues

No	Recommendation	Priority (S/M/L)
1	There is no central anti-counterfeiting resource in SEA. Many organizations are active, but often on their own - INTA, IACC, BASCAP, local anti-counterfeiting groups like MIAP in Indonesia or VATAP in Vietnam. Linking them to increase cooperation, avoid duplication and making common resources available would help UK companies, perhaps with the support of the UK ACG.	S
2	The collection of data, benchmarking and publication of tables to show performance of SEA countries at IP enforcement would be a useful tool to demonstrate improvements. For example the tables of Customs seizures could be an annual collection and report process.	S
3	The ASEAN secretariat Customs group needs to establish policy and measures to stamp out corruption and smuggling in areas such as law enforcement and Customs in SEA in view of the establishment of the AEC. This needs to be independent of the IP issues.	M

No	Recommendation	Priority (S/M/L)
4	The ASEAN secretariat needs to establish policy and measures to improve inland IP enforcement in SEA in view of the AEC. This should include harmonization systems, reporting of results, benchmarks, targets and measured improvements. It should include published data on criminal counterfeiting cases in each country.	M
5	In view of the upcoming AEC, the ASEAN secretariat needs to adopt (driven by national government policy), processes and systems to improve Customs IP border protection. This includes to improve inland Customs IP border records and seizures in SEA in view of the AEC. This should include harmonization of systems, reporting of seizure data, cooperation, best practices, targets and measured improvements. Public data to show which countries are improving and which are not is needed	M
6	The ASEAN secretariat Customs group needs to begin a dialogue and cooperation efforts with China Customs in view of the AEC, to cover how to cooperate to stop the influx of China fakes to the AEC, including stamping out corruption, misdeclaration and other illegal activities supporting to the importation of counterfeit goods.	M
7	ASEAN needs to drive improvements in its IP enforcement systems. “New” systems that could be adopted across all countries include (i) Adopting civil damages awards to rights holders alongside criminal fines at criminal IP trials (ii) processes to seize the proceeds of crime in IP cases, from assets to money to prevent criminal counterfeiting businesses from continuing or restarting.	M
8	Unfair competition and unfair trade practice rules are generally underdeveloped in SEA and this enables large numbers of businesses to compete unfairly. These laws need to be developed and implemented at a regional level perhaps via ASEAN.	L
9	Many SEA FTZs are known havens for counterfeit goods so global efforts to bring more oversight to prevent criminal activities is needed such as support for the Revised Kyoto Convention on FTZs. BASCAP is already far down the road of providing detailed recommendations on this.	M

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