

IPR Border Measures: Overview of the Egyptian System & Compliance with TRIPS

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During the World Trade Organisation's ("WTO") Fourth Trade Policy Review of Egypt earlier this year (the "Fourth Review"), member countries of the WTO ("WTO Members") commended Egypt for its sustained economic growth. The concluding remarks of the Chairperson of the Fourth Review noted that Egypt's economy had grown at an average of 4.5% annually over the last 12 years. Being a WTO Member, Egypt has been a party to the Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") since 1995. Egypt has also participated in the Information Technology Agreement and ratified the Protocol Amending the TRIPS Agreement. Egypt has undoubtedly taken significant steps towards modernising and developing its economy in accordance with international best practices and standards.

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There are, however, some concerns regarding Egypt's commitment to the protection of intellectual property ("IP") rights. During the

concluding remarks the Chairman also noted that WTO Members had asked Egypt about its “enforcement of intellectual property rights, particularly with respect to the prevalence of pirated and counterfeit goods, including software, music, and videos.” To this end, the Chairperson encouraged Egypt “to increase transparency and predictability in the protection and enforcement of intellectual property rights, to help it attract more foreign trade and investment.”

This article examines the measures Egypt has taken towards its commitment to the protection of IP rights, in accordance with the TRIPS Agreement, particularly with regard to border control measures.

Border Measures under TRIPS

The TRIPS Agreement clarifies the vague areas in the field of IP, facilitates trade in knowledge and creativity and helps resolve trade disputes over IP. The aim of the TRIPS Agreement is to promote certain principles and rules that would not only protect IP owners across the world but also restrict infringements and unfair competition. Towards achieving that aim, the TRIPS Agreement requires WTO Members to take measures that prevent the importation of IP infringing products at their borders. Indeed, border measures are one of the important issues, which the TRIPS Agreement addresses. Such measures are the first step in protecting IP rights, especially given the expansion and interconnectedness of the global market. As such, these measures are essentially the first ports of call in the fight against IP infringements.

The TRIPS Agreement obliges WTO Members to adopt border measures including the passing of legislation that prevents the cross border influx of pirated goods, counterfeit and knock-off products, and any other infringement of IP rights. Additionally, it enables holders of IP rights to request the cooperation of customs administrations (“Customs Authority”) in intercepting infringing goods at the borders and to prevent the release of these goods within the country. However, applying and enforcing the TRIPS Agreement border control requirements varies from one country to another. Given the reliance of some countries on manufacturing and exporting counterfeit products, border measures are mandatory only for imports of IP infringing goods. While this is only optional under the TRIPS Agreement, some WTO Members also apply border measures to goods destined to export. Obviously, these measures tackle the IP infringement problem at the onset i.e. before the entry of the infringing goods into the market, thereby saving IP rights holders valuable time, costs and resources. Thus, border measures are both effective and invaluable tools to protect the holders of IP rights as well the market and its consumers.

Egypt’s Position

To comply with the TRIPS Agreement, Egypt has issued a number of laws and regulations targeting border measures including the decree of the Minister of Trade No. 770 of 2005 regarding the Executive Regulations of the Import and Export Law no. 118 of 1975. The Executive Regulations set out the restrictions on the import of products, which infringe IP rights as well the procedures available to IP rights holders to stop and prevent infringing shipments from entering the country. Such procedures allow the holder of the IP rights to make a complaint to the relevant port, which would result in the shipment for ten days. Thereafter, the holder of IP rights has ten days to provide the customs authority at the relevant port with a court order to continue seizing the shipment and assign an expert to examine the shipment and confirm the infringement.

Additionally, Decree no. 58 of 1997 issued by the Minister of Supply and Internal Trade establishes a point of contact for the protection of IP rights. This point of contact corresponds to the “focal point” that the TRIPS Agreement refers to in connection with the WTO Members’ obligations to exchange information related to the trade of products that infringes the IP rights. In 2001, the Minister of Foreign Trade’s decision no 379 of 2001 further restructured Egypt’s point of contact into a focal point agency. The decision tasked this agency with the following functions in further compliance with Egypt’s TRIPS related obligations:

- exchanging information related to trade of products that infringes the intellectual property rights with

- other focal points that are located in member states;
- assisting the Egyptian Customs Authority in regards to border control measures which seek to protect IP rights;
- cooperating with the competent authorities whenever necessary or requested in relation to prevention of IP infringements;
- instructing parties of interest concerning the protection of IP rights; and
- cooperating with the competent authorities to raise awareness regarding IP rights through taking part in conferences, training and workshops locally and internationally

While the establishment of the Egyptian Focal Point Agency looks promising, its mission, objectives and mandate require better clarity/refinement. Moreover, the tools to enforce border measures in Egypt are still somewhat limiting for the holder of IP rights to pursue offenders and the involvement of the Focal Point Agency on that front is uncertain. As of yet, the holder of IP rights in Egypt must have detailed knowledge of the incoming products (port of origin, shipment number, name of vessel, name of consignee, date of arrival of shipment at port, etc.) in order to be able to alert and require the customs authority to seize the shipment. Without such information, IP infringing products can and do enter the country unchecked.

Customs Recordal System - A Work in Progress

In contrast to Egypt, other neighbouring countries have set up a Customs Recordal System that protects the holder of IP rights. The Customs Recordal System requires the holder of IP rights to record their rights and their agents/representatives with the Customs Authority. This Customs Recordal System imposes a duty on the customs authority to notify the IP rights holder of any suspected infringing incoming shipments. Once the Customs Authority suspects that a shipment may contain infringing products, customs officials will notify IP rights holder's or their agents about the shipment. The IP rights holder will then have the chance to inspect samples of the suspected products to confirm if they infringe their IP rights. In the event of a confirmed infringement, the IP rights holder can then file a complaint with customs to seize the shipment and destroy the infringing products.

The above Customs Recordal System has proven to be one of the most successful systems in protecting IP rights and their holders. IP rights holders no longer have to monitor counterfeit products throughout the world. This system would be of a great benefit to Egypt as the process of finding and pursuing infringers is too onerous on the holder of IP rights. As such, the Egyptian Customs Authority's adoption of the Customs Recordal System would be welcomed and would certainly further align Egypt with the WTO Fourth Review's call for it to be more transparent and predictable in terms of IP rights protection and enforcement.

Conclusion

Egypt's efforts to comply with its TRIPS Agreement related obligations on the exchange of information with other WTO Members and border control measures are promising. Equipped with the right and sufficient information about incoming shipments the competent authorities can pursue illegal trade of infringing products. However, to address some of the concluding remarks in the Fourth Review, Egypt would greatly benefit from the adoption of a Customs Recordal System. We understand that the Egyptian authorities are currently debating and researching the introduction of such a system and look forward to receiving news on these discussions.

For further details about the Egyptian Customs Procedures with respect to IP protection, please contact the author of this article.