

# Customs Combats Counterfeiting at the Border

## Proposed Amendments to the Australian Customs Seizure Scheme

The Australian Customs Service (Customs) has released a Consultation Paper regarding Proposed Amendments to the Australian Customs Notice of Objection Scheme. The Notice of Objection Scheme allows Customs to seize goods that are imported into Australia that infringe registered trade marks and copyright material notified by IP rights holders (objector).

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### CURRENT NOTICE OF OBJECTION SCHEME

The present Scheme requires the objector to commence infringement action against the importer of seized goods within the prescribed action period otherwise, unless the importer consents to the forfeiture of the seized goods, the goods must be released to the importer. Further, without a Court order preventing the release of the goods, Customs must release them back to the importer. Customs has the power to give to the objector information to help identify the importer of the seized goods, but not information about the source of the goods.

### PROPOSED AMENDMENTS

Two key amendments to the Australian Trade Marks and Copyright Acts are proposed to improve the operation and effectiveness of the current Customs seizure regime and, more importantly, with a view to preventing infringing goods from being released into the marketplace.

Firstly, it is proposed that Customs be permitted to release to the objector the name and address of the consignor or exporter of the seized goods. This would enable rights holders to pursue the suppliers of counterfeit goods in the country from which the goods originated.

Secondly, it is proposed that when suspected infringing goods are seized, the importer would be required either to give notification consenting to the forfeiture of the goods, or to give notification within the action period of an intention to claim the goods. In the latter situation, the importer would be required to provide an address

for service of legal documents. If the goods are not forfeited or claimed by the importer within the action period, and the objector does not take action, then by default the goods would be automatically taken to be forfeited and may be disposed of by Customs.

It is proposed that the provisions will enable an importer to make a late claim for the return of seized goods in special circumstances (for example, if the importer proves they were overseas at the time the seizure notice issued) in which case the objector would have a further opportunity to commence legal action.

The introduction of a requirement by the importer to either opt to lodge a claim for return of goods seized within the action period or to forfeit the seized goods would mean that Customs must not necessarily release seized goods to the importer if the objector does not commence legal proceedings within the action period.

**Comments on the proposals are to be submitted to Customs by Friday, 27 February 2009.**

### AUTHOR

Joy Atacador, Partner

### FURTHER INFORMATION

For further information on the Customs border protection scheme and anti-counterfeiting strategies, contact:

Joy Atacador + 61 3 9254 2888 or  
jatacador@davies.com.au



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Melbourne	Sydney	Brisbane	Canberra	Newcastle
1 Nicholson Street, Melbourne VIC 3000	255 Elizabeth Street, Sydney NSW 2000	Level 3, 303 Coronation Drive, Milton QLD 4064	Level 11, 60 Marcus Clarke St, Canberra ACT 2601	130 University Drive Callaghan NSW 2308
Telephone +61 3 9254 2777	Telephone +61 2 9293 1000	Telephone +61 7 3368 2255	Telephone +61 2 6248 8063	Telephone +61 2 4960 8366
Facsimile +61 3 9254 2770	Facsimile +61 2 9262 1080	Facsimile +61 7 3368 2262	Facsimile +61 2 6248 6591	Facsimile +61 2 9262 1080
<a href="http://www.davies.com.au">www.davies.com.au</a>				