

“Anti-Counterfeiting Measures”
Chapter 2. Anti-Counterfeiting Measures in Japan

Request to Customs

(Eddy)

What other means of conflict resolution are there, apart from the courts?

(Sakura)

The most effective method is to make a request to customs.

(Sakura)

Since most infringing products in Japan have been imported from abroad, obtaining a customs suspension is extremely effective in preventing their distribution domestically.

(Narrator)

The customs suspension system works like this:

When an IP right holder determines that a cargo about to be imported will infringe their right, they apply to the Chief Customs Inspector to initiate identification procedures.

(Narrator)

Most countries have procedures for making such applications to customs. The difference in Japan is that, in addition to trademarks, an application can be made on the basis of patents, utility model, designs, copyrights and plant breeder's rights.

(Narrator)

An application for customs suspension can also be made on the basis of the Unfair Competition Prevention Law. The right holder first submits an application for suspension to the Chief Customs Inspector. If necessary, advice is requested from a specialist committee, and then customs decides whether or not to accept the application.

(Narrator)

If a customs investigation finds suspected goods, customs notifies both importer and right holder that identification procedures have been initiated. Both parties submit their opinions and evidence concerning the suspected goods to customs. The contents of the submissions are disclosed to both parties as far as possible and both are given an opportunity to present objections. On the basis of this, customs decides whether the goods are infringing or not.

(Eddy)

Why are expert advisors consulted about the application for suspension?

(Sakura)

Sometimes it is too difficult to decide on the application for suspension from the submitted documentation only. Appropriate expert advisors are selected for each case from a registry of lawyers, patent attorneys and academics.

(Eddy)

If the infringement is recognized, what happens next?

(Sakura)

If the importer objects to the decision, they can file a formal objection. If the importer does not file an objection and does not voluntarily dispose of the infringing goods themselves, customs will confiscate and destroy the goods.

(Eddy)

Are penalties only imposed on the person who imports infringing goods?

(Sakura)

The Customs Law provides for dual liability. What this means, for example, is that if an employee of a company imports or tries to import counterfeit goods in the course of their employment, then their company, as importer, will be held responsible for the employee's actions and can be fined up to 10 million yen.

(Narrator)

There are about 20,000 cases of import seizures each year, amounting to over 600,000 items. For both cases and number of items, trademark violations are most common, and make up over 85% of all seized IP rights infringing goods. The next most common are copyrights and design rights.

(Narrator)

Here are the numbers for import seizures, ranked by source country.