

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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Peer Reviewed

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ISSN

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THE ROLE OF CUSTOMS IN TRADEMARK ENFORCEMENT IN INDIA - A COMPARATIVE LEGAL ANALYSIS WITH THE USA, EUROPEAN UNION, AND CHINA

AUTHORED BY - YASHWONT KIRAN S¹

Abstract

The enforcement of intellectual property rights (IPRs), particularly trademarks, has gained significant importance in the global trade landscape. In India, Customs authorities play a critical yet under-examined role in curbing the import and export of counterfeit and smuggled goods, thereby contributing to trademark protection and economic integrity. This paper presents an analytical study of the role of Indian Customs in trademark enforcement, focusing on legal frameworks, institutional mechanisms, operational challenges, and policy recommendations. The study is anchored in the Customs Act, 1962, and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, which empower Customs officers to suspend the clearance of suspected infringing goods. A central element examined is the Recordation System, which allows trademark owners to register their rights with Customs to facilitate detection of counterfeit or smuggled trademark-infringing goods at entry points. The analysis evaluates the effectiveness and accessibility of this system.

The paper also explores the intersection of trademark law and border enforcement, highlighting the roles of the Controller General of Patents, Designs, and Trademarks (CGPDTM) and inter-agency collaboration. It further assesses India's compliance with TRIPS obligations on border measures. Judicial pronouncements and case studies involving seizures of counterfeit electronics, luxury goods, and pharmaceuticals provide insights into both successful enforcement and operational gaps. Key challenges identified include limited technical expertise, resource shortages, improper use of enforcement tools, and lack of stakeholder awareness. The paper critiques the limited remedies available to importers in cases of wrongful detention, raising issues of procedural fairness. Concluding with policy suggestions, the study calls for enhanced training, technological upgrades, better coordination, and increased stakeholder awareness.

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Keywords: Trademark Enforcement, Indian Customs, Counterfeit Goods, Customs Act 1962, IPR (Imported Goods) Enforcement Rules 2007

Introduction

The protection and enforcement of intellectual property rights (IPRs), particularly trademarks, have become increasingly important in the wake of globalization and liberalization. Trademarks, being key indicators of origin, quality, and goodwill, are critical for brand identity and consumer trust in a market-driven economy. The proliferation of counterfeit and infringing goods in global supply chains not only affects the economic interests of legitimate trademark holders but also poses significant risks to public health, safety, and national security. In this scenario, border control agencies, especially Customs authorities, assume a pivotal role in intercepting infringing goods at the entry and exit points of a country. This paper seeks to examine the evolving and strategic role played by Indian Customs in the enforcement of trademark rights, with a focus on legal provisions, operational mechanisms, challenges, and recommendations for improvement.

Customs enforcement is the first line of defense against the cross-border movement of counterfeit and pirated goods. The World Customs Organization (WCO) and the World Trade Organization (WTO) have emphasized the importance of strong border enforcement mechanisms, particularly under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which mandates signatory nations to adopt effective measures for the protection of IPRs at the borders. India, as a TRIPS-compliant country, has incorporated several provisions to facilitate trademark enforcement by Customs under the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. These legal instruments empower Customs officers to suspend clearance and seize goods suspected of infringing registered trademarks, thereby helping trademark owners prevent market dilution and brand erosion.

Nearly one-third of Indian adults have fallen prey to counterfeit products purchased through various e-commerce platforms, highlighting online counterfeiting as one of the most rapidly escalating forms of criminal activity.² A significant milestone in India's border enforcement

²*The State of Counterfeiting in India 2021*, Authentication Solution Providers' Association (ASPA), available at: https://www.aspaglobal.com/pre_upload/nation/1623216858-4730baa0efdb83aba174859af0a3a6a5-Report%20The%20State%20of%20Counterfeiting%20in%20India%202021.pdf, last accessed 12 June 2025.

regime is the Recordation System introduced by the Central Board of Indirect Taxes and Customs (CBIC), which allows trademark owners to register their rights with Customs. Once the rights are recorded, Customs officials are authorized to monitor, inspect, and detain suspected infringing goods. This proactive enforcement mechanism ensures that counterfeit goods can be intercepted even before they enter the domestic market. However, the success of this system depends on several factors, including the technical capacity of Customs officials, the accuracy of recorded information, and the cooperation between trademark holders and enforcement agencies.

Despite the presence of a legal framework, the implementation of trademark enforcement at the border faces several challenges. These include lack of specialized training for Customs officers, limited use of technology in cargo scanning, insufficient coordination between Customs and trademark owners, and procedural bottlenecks. Additionally, the process of identifying counterfeit goods requires expertise in distinguishing genuine products from fake ones, which is not always feasible given the volume and complexity of international trade. Moreover, wrongful detention of legitimate goods due to overbroad enforcement may lead to legal disputes, procedural delays, and commercial losses for importers and exporters.

From a comparative perspective, several jurisdictions such as the European Union, the United States, and China have developed sophisticated border enforcement mechanisms for trademark protection. These include the use of Artificial Intelligence, centralized databases, and regular capacity-building for Customs officials. India, while making progress, still needs to strengthen its institutional and procedural apparatus to meet the growing challenges of cross-border trademark infringement. A comprehensive evaluation of Customs' role in trademark enforcement is thus essential for identifying gaps, assessing effectiveness, and recommending policy reforms.

This paper undertakes a detailed analytical study of the role of Indian Customs in trademark enforcement. It explores the relevant legal provisions, the operational aspects of the Recordation System, the role of the Controller General of Patents, Designs and Trademarks (CGPDTM), and the efficiency of border enforcement mechanisms. The paper also analyses judicial decisions, stakeholder experiences, and policy documents to draw practical insights. By doing so, it aims to contribute to the ongoing discourse on strengthening intellectual property enforcement in India through an efficient and balanced border control regime.

Indian Customs, functioning under the Central Board of Indirect Taxes and Customs (CBIC), holds a key regulatory and enforcement responsibility in monitoring and controlling the movement of goods entering and leaving the country. In recent years, its role has expanded to include the enforcement of intellectual property rights, particularly trademarks, as counterfeit goods increasingly infiltrate the Indian market. However, the legal, procedural, and operational dimensions of Customs' role in trademark enforcement remain inadequately analyzed.

In the context of trademark enforcement at India's borders, the Ministry of Finance, through the Central Board of Indirect Taxes and Customs (CBIC), plays a central role in regulating imports and exports and intercepting counterfeit goods. The Customs officers, functioning under this ministry, are empowered by the *Customs Act, 1962* and related rules to seize trademark-infringing goods at the border. Conversely, the Ministry of Commerce and Industry, through the Department for Promotion of Industry and Internal Trade (DPIIT), serves as the central authority responsible for formulating and managing intellectual property rights (IPR) policy in India. It supervises the Controller General of Patents, Designs and Trademarks (CGPDTM), the authority responsible for granting and administering trademark rights. Effective enforcement at the border thus requires coordination between these two ministries. Their synergy ensures protection of trademark holders and compliance with international obligations under TRIPS.

Statement of the Research Problem

Trademark infringement through the cross-border trade of counterfeit goods has emerged as a significant threat to brand integrity, consumer safety, and the national economy. In the Indian context, the problem is compounded by porous borders, complex trade routes, and the sheer volume of goods entering and leaving the country. Despite having a comprehensive legal framework for intellectual property protection, the enforcement of trademark rights at the borders remains inconsistent and underutilized. This research seeks to critically examine the gaps between the legislative framework and its practical implementation by Customs authorities in enforcing trademark rights.

The Customs Act, 1962, particularly Sections 11, 111, and 113, empowers the Central Government to prohibit the import or export of goods that infringe intellectual property rights, including trademarks. These provisions allow for the seizure and confiscation of infringing goods and are further operationalized through the Intellectual Property Rights (Imported

Goods) Enforcement Rules, 2007. These Rules provide for a Recordation System wherein trademark holders can register their rights with the Customs authorities for proactive enforcement. However, this system is underutilized, partly due to lack of awareness and partly due to procedural complexities.

Furthermore, although India is a signatory to the TRIPS Agreement, which under Article 51 mandates effective border measures to prevent trademark-infringing goods from entering markets, the actual enforcement on the ground suffers from inadequate training of Customs personnel, absence of advanced detection technology, and weak inter-agency coordination.

This research addresses the problem of whether existing statutory mechanisms under Indian law are sufficient and effective for border enforcement of trademark rights. It also investigates the institutional and operational shortcomings that hinder effective Customs intervention, and explores how these challenges can be resolved through legal reforms, capacity-building, and policy initiatives to strengthen trademark enforcement at India's borders.

Objectives of the Research

1. To examine the legal framework governing the enforcement of trademark rights by Customs authorities in India, with special reference to the *Customs Act, 1962* and the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*.
2. To analyze the effectiveness and operational efficiency of the Recordation System introduced by Indian Customs for the protection of registered trademarks at the border.
3. To evaluate India's compliance with international obligations, particularly under the *TRIPS Agreement*, in relation to border measures for the prevention of trademark infringement through import and export of counterfeit goods.
4. To identify and assess the practical challenges faced by Customs authorities in detecting and intercepting trademark-infringing goods, such as lack of training, limited resources, procedural delays, and inadequate stakeholder coordination.
5. To analyse the statutory powers and functions of the Customs authorities in curbing the trademark infringements.
6. To study judicial interpretations and administrative decisions that have influenced the role of Customs in trademark enforcement, and to understand their impact on shaping enforcement practices.

7. To recommend legal, institutional, and policy reforms aimed at strengthening the role of Indian Customs in the enforcement of trademark rights, including suggestions for technological upgrades, inter-agency collaboration, and capacity-building initiatives.
8. To examine the criteria and procedures followed by Indian Customs to determine whether imported goods constitute trademark infringement, including the application of similarity tests, likelihood of confusion, and reliance on recordal and packaging verification mechanisms.

Scope and Limitations

Scope of the Study

This research focuses on a comprehensive analysis of the role played by Indian Customs in the enforcement of trademark rights at the borders. The study:

1. Examines the legal framework governing Customs' powers in trademark enforcement, primarily under the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.
2. Analyzes the procedural mechanisms including the Customs IPR Recordation System and the practical role of Customs officers in identifying, seizing, and adjudicating trademark-infringing goods.
3. Evaluates the interplay between Customs authorities and trademark law enforcement, including cooperation with other agencies such as the Controller General of Patents, Designs, and Trade Marks (CGPDTM).
4. Studies international obligations under the TRIPS Agreement and draws comparisons with foreign jurisdictions like the USA, EU, and China to suggest best practices.
5. Incorporates case studies, judicial precedents, and empirical data (where available) to assess the effectiveness and challenges in border enforcement of trademarks in India.
6. Offers recommendations for legal, administrative, and technological improvements in Customs enforcement mechanisms.

Limitations of the Study

1. The research is limited to trademark enforcement and does not extensively cover other intellectual property rights such as patents or copyrights, although they may be referenced for comparative purposes.
2. The study primarily focuses on imported goods and border control measures; enforcement within the domestic market is not the central theme.

3. Availability of empirical data on Customs seizures and enforcement practices is limited due to the non-public nature of many proceedings and inconsistent reporting across Customs zones.
4. Regional disparities in enforcement practices and administrative efficiency among different Customs ports may not be fully captured.
5. The study does not include interviews or field surveys of Customs officers or traders due to practical constraints, relying instead on legal texts, secondary data, and case laws.
6. Given the evolving nature of both trade practices and IP laws, certain recent developments or policy changes may not be comprehensively addressed depending on their timing and accessibility.

Review of Literature

1. ***Verma, S.K. (2004). Enforcement of Intellectual Property Rights: TRIPS Procedure & India, Journal of the Indian Law Institute, Vol. 46(2), pp. 183–206.***

S.K. Verma's seminal work provides an in-depth analysis of the enforcement obligations imposed by the TRIPS Agreement, particularly Articles 41–61, with a focus on their domestic implementation in India. The article examines the legislative reforms India undertook to align with TRIPS mandates, especially in the context of judicial remedies, procedural safeguards, and border enforcement. Importantly, the author highlights the evolving role of Indian Customs authorities in intercepting counterfeit goods at the border, as required under TRIPS Articles 51–60. Verma points out that while India has incorporated border control measures under the Customs Act and IPR (Imported Goods) Enforcement Rules, 2007, there remain significant procedural inefficiencies, lack of technical training, and limited stakeholder awareness. The paper critiques the institutional capacity of Customs in identifying and seizing trademark-infringing goods and calls for stronger inter-agency coordination and legal clarity. Though doctrinal in nature, the article provides foundational insight into the legal and administrative challenges facing Customs enforcement of trademarks in India.

2. ***Kanwal D. P. Singh, Enforcement of Intellectual Property Rights at Custom Checkpoints: An Analysis of Various Jurisdictions, Kathmandu School of Law Review, 2019, Volume 7, Issue 1, 2019, pp. 52-68***

Singh examines the Indian customs framework under the Customs Act, 1962 and the IPR (Imported Goods) Enforcement Rules, 2007. The article identifies procedural gaps such as the

absence of statutory timelines, limited technical expertise among customs officials, and inadequate punitive provisions against misuse of recordal mechanisms. Drawing comparisons with enforcement systems in Australia, China, and South Korea, the author highlights more effective and coordinated approaches adopted internationally. Key recommendations include setting up zonal IPR task forces, an independent appellate cell for technical review, and fostering better industry–Customs collaboration. The article is policy-rich and comparative in nature but lacks empirical data and technological insights, which would enhance its implementation value.

3. *Nilanshu Shekhar, Akanksha Anand, Rishabh Manocha, Role of Custom Seizures in Trademark Enforcement in India, KAnalysis-Attorneys at Law Blog*

This article explains the operational framework of trademark enforcement by Indian Customs under the Customs Act, 1962 and IPR (Imported Goods) Enforcement Rules, 2007. It outlines the ARTS/ICEGATE portal-based recordal process, covering steps such as notice submission, Unique Temporary Registration Number (UTRN) issuance, bond execution, and customs intervention protocols. The blog emphasizes Customs' authority to suspend clearance of suspected counterfeit goods, notify rights holders, and act ex officio. It highlights the practical importance of border enforcement amid rising infringement cases. Although rich in procedural detail, the article would benefit from empirical data and critical evaluation of enforcement outcomes. It functions as a useful reference, though it falls short in providing comprehensive analytical insight.

4. *Jayant Kumar, ALG India, Enforcement of Intellectual Property Rights Through Customs, Mondaq*

This article outlines the comprehensive legal framework under the Customs Act, 1962 (Sections 11, 111, 113) and the IPR (Imported Goods) Enforcement Rules, 2007 for preventing the importation of infringing intellectual property goods. It highlights proactive measures by Indian Customs, citing prominent seizures (e.g., Samsung) where Customs acted on grounds of patent infringement. The piece details registration and notice procedures, including timelines (notice registration within 30 days), bond/indemnity obligations, and the suspension of suspect shipments. Enforcement mechanisms are elucidated—seizure, determination of infringement, and disposal (including destruction) under official supervision.

5. Rommel Pandit & Paramita Nandy Gupta, *Protecting IP Rights in India Through Customs Enforcement, World Trademark Review*

This article examines India's CBEC IPR module under the IPR (Imported Goods) Enforcement Rules 2007, explaining how rights-holders can register their IP for border enforcement, leading to suspension, inspection, and seizure of infringing goods. It contextualizes the framework within TRIPS Articles 51–60, clarifying procedural safeguards like time limits, importer rights, and bond requirements. The authors highlight the ex officio powers enabled by Automated Recordation and Targeting System (ARTS), and detail mechanisms for determination and disposal, including destruction of seized goods. Real-world enforcement steps are clearly described, emphasizing improved operational clarity and stakeholder roles. The article is concise and up-to-date, but could be strengthened with empirical data on seizure volumes or comparative benchmarks.

Research Questions

1. What is the legal framework governing the role of Indian Customs in enforcing trademark rights at the borders?
2. How effective is the Customs IPR Recordation System in detecting and preventing the import of infringing trademark goods?
3. To what extent do Customs authorities in India possess the technical expertise and resources required for efficient trademark enforcement?
4. What are the procedural challenges and limitations faced by trademark owners and importers in Customs-related trademark enforcement?
5. How does India's Customs enforcement of trademark rights compare with the systems in jurisdictions like the USA, EU, and China?
6. What legal or administrative reforms can enhance the effectiveness of Indian Customs in trademark protection?

Hypothesis

Despite having a statutory framework for border enforcement of intellectual property rights, the role of Indian Customs in trademark enforcement is less effective when compared to the established mechanisms in the USA, European Union, and China, due to factors such as limited procedural clarity, inadequate inter-agency coordination, lack of technical training, and insufficient stakeholder awareness.

Research Methodology

This research adopts a qualitative doctrinal and comparative legal approach, focusing on statutory interpretation, case law analysis, and administrative rules related to Customs enforcement of trademark rights in India. Secondary sources include the Trade Marks Act, 1999, Customs Act, 1962, and the IPR (Imported Goods) Enforcement Rules, 2007, scholarly articles, reports, and international treaties like the TRIPS Agreement. Comparative analysis is drawn from trademark border enforcement frameworks in the USA, European Union, and China. The study critically examines the efficacy, challenges, and best practices in enforcement. No fieldwork is involved; findings are based entirely on legal and policy documents.

Significance of the study

In an increasingly globalized trade environment, the protection of intellectual property rights (IPRs), particularly trademarks, at national borders has become a matter of strategic importance. The infiltration of counterfeit and infringing goods not only undermines legitimate trade but also endangers consumer safety, erodes brand value, and results in significant economic losses. Indian Customs, as the frontline enforcement agency at ports of entry and exit, plays a vital role in trademark protection under the statutory framework of the Customs Act, 1962, and the IPR (Imported Goods) Enforcement Rules, 2007.

Despite these legislative provisions, enforcement at the border remains inconsistent and underutilized in India. This study is significant because it undertakes a critical legal and institutional analysis of Customs' role in trademark enforcement, bringing to light the practical challenges, procedural bottlenecks, and gaps in the existing Indian system. Through a comparative legal analysis with the USA, European Union, and China—jurisdictions with more evolved and robust border enforcement systems—the research identifies key structural and procedural reforms that can enhance the efficiency and effectiveness of India's enforcement regime.

The study is also valuable to policymakers, Customs authorities, trademark owners, legal professionals, and scholars. It provides evidence-based recommendations to improve stakeholder awareness, streamline recordal mechanisms, foster inter-agency coordination, and strengthen the technical capacity of Customs officials. Additionally, it contributes to academic

discourse by bridging doctrinal legal analysis with practical enforcement realities in the field of intellectual property law.

By evaluating international best practices and aligning them with India's domestic legal framework, this research can serve as a foundation for policy reforms that aim to strengthen border enforcement of trademark rights and support India's compliance with its obligations under global trade agreements such as TRIPS.

Regulatory Framework for Trademark Enforcement by Indian Customs

Authorities

Trademark enforcement at the border in India is anchored in a combination of statutory provisions and administrative rules aimed at preventing the import of counterfeit or infringing goods. The primary legal instruments include the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, read alongside the Trade Marks Act, 1999. These laws collectively empower Indian Customs authorities to intercept counterfeit or infringing goods at the border and provide procedural and substantive guidance for the protection of intellectual property rights (IPRs), particularly trademarks.

Counterfeiting and falsification can be tackled through a three-pronged approach in India:

- a) **Judicial Action:** The courts play a key role by examining the facts of the case under the Trade Marks Act, 1999. Based on the evidence and as per the proviso to Section 103, the court determines the appropriate punishment for the offence.
- b) **Police Action:** Law enforcement can be directly approached in cases involving violations of Sections 103, 104, and 105 of the Trade Marks Act. Section 115 of the Act empowers the police to take immediate action, including conducting raids and making arrests, without prior court approval in certain situations.
- c) **Executive/Administrative Action:** Customs authorities also have powers under the **Customs Act, 1962** to intercept, seize, and destroy counterfeit goods at the borders. This executive mechanism serves as a crucial first line of defense to prevent the entry of fake products into the country.

Together, these legal, law enforcement, and administrative routes provide a comprehensive framework for protecting trademark rights and curbing counterfeiting.³

³Kanwal D.P. Singh, *Enforcement of Intellectual Property Rights at Custom Checkpoints: An Analysis of Various Jurisdictions*, *Kathmandu School of Law Review*, Vol. 7, Issue 1 (2019), pp. 52–68, available at: <https://kslreview.org/index.php/kslr/article/view/1200/1193> (last accessed July 8, 2025).

I. The Customs Act, 1962

The **Customs Act, 1962** is the principal legislation governing the import and export of goods in India. It serves as the legal basis empowering Customs authorities to take action against goods that violate intellectual property rights. In the past, the Central Government has taken steps to curb the import and export of goods infringing intellectual property rights by using its powers under Section 11 of the Customs Act. For instance, in 1960, a notification was issued to restrict the export—by sea or land—of items violating Sections 78 and 117 of the Trade Marks Act, 1958. Later in 1964, another notification was released to prohibit goods that carried false trademarks, misleading descriptions, or attempted to pass off as genuine branded products. These measures signaled early efforts to strengthen IP enforcement at the borders.⁴

1. Section 11 – Power to Prohibit Import or Export

This section authorizes the Central Government to prohibit imports or exports in the interest of protecting public health, safety, and **intellectual property rights**. This provision forms the statutory basis for issuing notifications restricting the movement of goods that infringe registered trademarks.

2. Section 110 – Seizure of Goods

Customs officers are empowered to **seize goods** that are suspected of being liable to confiscation, including counterfeit or infringing trademark goods. This enables proactive enforcement at the point of entry.

3. Section 111 – Confiscation of Improperly Imported Goods

Section 111 outlines multiple grounds for the confiscation of goods, including imports that violate prohibitory notifications issued under Section 11. Trademark-infringing goods fall within this ambit and are thus liable for confiscation.

In *Sheikh & Mahajan LLP v. Commissioner of Customs*⁵, Sheikh & Mahajan LLP declared a consignment of footwear in January 2018, however, Customs officials suspected a case of misdeclaration. In February, they seized the goods, and a thorough inspection that followed uncovered numerous counterfeit shoes displaying logos of brands like Nike, Adidas, and Puma. The importer's director acknowledged errors in the declared quantity and value, attributing fake-branded shoes to mistakes by the Chinese supplier. He proposed a joint market valuation to determine the actual price,

⁴Jayant Kumar, *Enforcement of Intellectual Property Rights through Customs*, Mondaq (India), published approx. 1.8 years ago, available at: <https://www.mondaq.com/india/patent/1361810/enforcement-of-intellectual-property-rights-through-customs> (last accessed July 8, 2025).

⁵Sheikh & Mahajan LLP v. Commissioner of Customs, Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Customs Appeal No. 52368 of 2019, Final Order No. 52052/2021, decided on December 3, 2021

which Customs accepted and conducted collaboratively.

The rights holders—Nike, Adidas, and Puma—verified, through trademark registrations and expert evaluation, that the seized footwear infringed intellectual property laws. This prompted notification to the Customs IPR Cell, activating border enforcement measures under the IPR (Imported Goods) Rules, 2007. The initially declared value of ₹16.04 lakh was rejected by the Customs authority, which reassessed it at ₹14.25 lakh using the deductive valuation method. The counterfeit shoes were ordered to be absolutely confiscated under Section 111(d).

Customs authorities imposed penalties of ₹3.93 lakh under Section 114A and ₹2.20 lakh under Section 112. The Commissioner of Customs (Appeals) upheld the confiscation, the revised valuation, and the penalties. On further appeal, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) affirmed most of the findings but set aside the penalty under Section 114A, deeming it redundant under the applicable legal provisions. The Tribunal also confirmed that the confiscation and revaluation were valid and that the rights holders had complied with the IPR Rules by registering their rights within the prescribed timeframe.

4. Section 135 – Evasion of duty or prohibitions

This section deals with penal consequences for customs offences, including smuggling and fraudulent imports. In cases of deliberate trademark infringement through importation of counterfeit goods, offenders may face fines and imprisonment.

II. The Intellectual Property Rights (Imported Goods) Enforcement Rules,

2007

Formulated under the authority of Section 11 of the Customs Act, the **IPR Enforcement Rules, 2007**⁶ operationalize border enforcement of intellectual property rights in line with Articles 51–60 of the TRIPS Agreement.

1. Rule 3 – Notice by the right holder

Trademark proprietors can submit a notice to the Commissioner of Customs seeking suspension of clearance for goods suspected of infringement. This application must be supported with proof of trademark ownership, relevant registration details, and evidence indicating infringement.

⁶The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, available at: https://upload.indiacode.nic.in/showfile?actid=AC_CEN_2_2_00042_196252_1534829466423&type=rule&file name=intellectual_property_rights.pdf, (last accessed July 8, 2025).

2. **Rule 4 – Registration of notice by the Commissioner**

This rule says that within 30 working days the commissioner should notify the applicant whether the notice has been registered or rejected.

3. **Rule 5 – Conditions for registration**

The right holder or their authorised representative is required to execute a bond with the Commissioner of Customs for an amount, along with any surety and security the Commissioner considers appropriate. This bond must guarantee protection for the importer, consignee, and owner of the goods, as well as the relevant authorities, from any liabilities. It must also cover expenses related to the destruction, demurrage, and detention of the goods until they are either destroyed or otherwise disposed of. In addition, the right holder must provide an indemnity bond to the Commissioner of Customs, undertaking to compensate the Customs authorities for any liabilities or costs resulting from the suspension of clearance of the suspected infringing goods.

4. **Rule 6 – Prohibition for import of goods infringing intellectual property rights**

After the Commissioner reviews and approves the registration of the notice, the import of the suspected infringing goods into India is deemed prohibited under the provisions of Section 11 of the Customs Act, 1962.

5. **Rule 7–10 – Procedural Actions**

These rules govern the adjudication process and disposal of infringing goods, including the possibility of **destruction of counterfeit goods**, ensuring they are not reintroduced into circulation.

Despite their strength, these Rules face challenges in practical implementation, such as limited awareness among stakeholders, inadequate training of Customs officials, and technological constraints in identifying infringing goods.

III. The Trade Marks Act, 1999

The **Trade Marks Act, 1999**⁷ does not directly empower Customs officers, it is crucial in determining the **validity of rights** being enforced at the border. The Act defines infringement, outlines the rights of the trademark proprietor, and establishes the procedures for registration.

1. Section 28 – Exclusive Rights Granted Through Registration

This provision grants the registered trademark owner the exclusive authority to use the mark for the goods or services it is registered under and to take legal action against

⁷The Trade Marks Act, 1999, Act No. 47 of 1999, enacted by the Parliament of India

infringement.

2. Section 29 – Infringement of Registered Trade Marks

Section 29 lays down the conditions under which a registered trademark is deemed to be infringed. Importing goods bearing a deceptively similar or identical mark without authorization constitutes infringement under this section.

3. Section 135 – Relief in Infringement Cases

Although this provision primarily deals with civil remedies, such as injunctions and damages, it indirectly supports Customs enforcement by establishing that infringement is a legally actionable wrong, which justifies administrative seizure of infringing goods.

4. Section 139 – Border Protection Provisions (Read with Customs Rules)

Although not explicitly referring to Customs, this section allows for **inter-ministerial cooperation**, particularly with the Ministry of Finance, to ensure that IPRs are protected at all stages of commerce, including importation.

Effectiveness of the Recordation System in India

The Recordation System, introduced under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, is one of the core mechanisms that empowers trademark owners in India to proactively safeguard their rights at the borders. It allows right holders to register their trademarks with Indian Customs through an online portal, enabling Customs officials to identify and suspend the clearance of suspected infringing goods during importation. While the concept mirrors border enforcement practices in jurisdictions such as the USA and the European Union, the effectiveness of the system in India remains a subject of critical analysis.

The primary objective of the Recordation System is to assist Customs officers in distinguishing genuine goods from counterfeit or infringing ones by making key information about registered trademarks accessible. Upon successful recordal, Customs officers are expected to monitor imported goods and act when suspected infringement is detected. The system is designed to be preventive, shifting enforcement from a reactive litigation-based model to a proactive border-control model. Rights holders can also register their intellectual property with customs by submitting an application containing comprehensive information, including registration certificates and details about the protected goods. This registration allows customs to maintain a record, facilitating more efficient monitoring and enforcement at the border.⁸

⁸Rommel Pandit & Paramita Nandy Gupta, *Protecting IP Rights in India through Customs Enforcement*, *World Trademark Review*, 19 November 2024, available at: <https://www.worldtrademarkreview.com/guide/india->

Customs recordation strengthens enforcement efforts by allowing authorities to promptly detect and seize infringing goods, thereby safeguarding the rights holder's interests and maintaining the integrity of the market. This pre-emptive measure promotes heightened vigilance and swift action in protecting intellectual property rights.

However, despite its advantages, the practical implementation of the Recordation System in India encounters notable challenges. One major issue is the limited awareness among trademark owners, particularly small and medium-sized enterprises (SMEs) within the country.

Many right holders are unaware of the portal or the benefits of recordation. Secondly, technical training and expertise among Customs officers in identifying infringing goods is often lacking, which limits the value of the recorded data. Unlike in the USA or EU, India does not have product authentication specialists embedded within Customs.

Furthermore, the lack of regular updates, digitized data integration, and AI-supported detection tools limits the efficiency and real-time utility of the recordation database. Administrative delays, procedural complexity, and insufficient inter-agency coordination further reduce the system's deterrent effect.

The Recordation System is a forward-thinking tool embedded in India's IPR border enforcement regime, its current implementation suffers from structural and operational inefficiencies. Strengthening its effectiveness would require capacity-building measures, stakeholder education, improved inter-departmental integration, and adoption of technology-enabled solutions. In India, rights holders can proactively protect their intellectual property by registering their rights with Customs at both local and national levels. This process, known as Customs recordal, helps authorities monitor and intercept counterfeit goods at major entry points. The recordal system is currently managed online through the ICEGATE portal: <http://ipr.icegate.gov.in>. This registration allows Customs officials to identify and act on suspected infringements more efficiently, strengthening border enforcement and safeguarding brand owners' rights.⁹

[managing-the-ip-lifecycle/2025/article/protecting-ip-rights-in-india-through-customs-enforcement](https://www.ijlra.com/managing-the-ip-lifecycle/2025/article/protecting-ip-rights-in-india-through-customs-enforcement) (last accessed July 8, 2025).

⁹Nilanshu Shekhar, Akanksha Anand, Rishabh Manocha, Role of Custom Seizures in Trademark Enforcement in India, Kanalysis Blog, available at: <https://kanalysis.com/role-of-custom-seizures-in-trademark-enforcement-in-india/> (last accessed July 8, 2025).

India's Compliance with TRIPS

India, as a founding member of the World Trade Organization (WTO), is bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which sets minimum standards for the protection and enforcement of intellectual property rights. Since the TRIPS Agreement came into force in 1995, India has undertaken significant legal and policy reforms to align its domestic laws with its international obligations.

An essential aspect of the TRIPS Agreement is Part III (Articles 41–61), which sets out the enforcement mechanisms that member countries are required to establish to ensure effective protection against intellectual property rights (IPR) infringement. Specifically, Articles 51 to 60 obligate WTO members to adopt border control measures aimed at preventing the entry of counterfeit trademark goods and pirated copyright materials. To align with TRIPS obligations, India has revised key intellectual property laws, including the Trade Marks Act, 1999, the Patents Act, 1970 (as amended in 2005), and the Copyright Act, 1957, to conform to international standards. Regarding border enforcement, India introduced the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, under the Customs Act, 1962. These rules empower Customs authorities to suspend the clearance of goods suspected of infringing intellectual property rights, such as trademarks. Moreover, India established the Customs IPR Recordation System, which enables right holders to register their trademarks with Customs for more efficient enforcement at the point of entry. These measures reflect substantial compliance with TRIPS Article 52, which requires the provision of evidence and information by right holders, and Article 53, which allows for the suspension of customs clearance.

However, compliance in form has not always translated to compliance in practice. TRIPS mandates not just the availability of legal procedures but also their effective and deterrent enforcement. In India, procedural delays, lack of awareness among stakeholders, limited technical capacity of Customs officials, and absence of a robust adjudication mechanism at the border often dilute the intended effectiveness of the legal framework.

Additionally, the absence of comprehensive civil or criminal remedies for border-related IPR offences, as envisioned under TRIPS Articles 45–61, raises questions about the adequacy of India's enforcement infrastructure. Moreover, the available mechanisms are more reactive than preventive, and small-scale right holders often find the procedural burdens discouraging.

In conclusion, while India has largely achieved formal compliance with the TRIPS Agreement through legislative enactments and administrative rules, functional and operational compliance remains a work in progress. To ensure full adherence to TRIPS standards, India must strengthen institutional capacity, streamline procedures, improve stakeholder engagement, and invest in technology-driven border enforcement mechanisms. Developed countries have placed strong emphasis on combating product piracy, particularly in trademarks and copyrights, which is why the TRIPS Agreement provides detailed provisions for border enforcement of intellectual property rights (IPRs). Member countries are required to implement procedures at their borders to prevent the entry of counterfeit and pirated goods.

However, there are clear limits. Border measures do not apply to goods traded between countries within a customs union like the EU, or to goods that have been legally placed in the market by or with the approval of the right-holder—this relates to the principle of *exhaustion of rights*, which TRIPS leaves to each country's discretion under Article 6.

Similarly, goods merely transiting through a country or small personal consignments (known as *de minimis* imports) are generally excluded from such enforcement, again at the discretion of the member country (Article 60).

While the focus of these border measures is on preventing the importation of counterfeit trademark or pirated copyright goods, members are free to apply them to other forms of IPR violations too. TRIPS requires action only at the point of importation, but countries can choose to extend the same to exports if they wish (Article 51).

Articles 51 to 59 of TRIPS lay out the specifics of these border procedures, forming the legal backbone of how member nations should structure customs enforcement of IPRs.¹⁰

In April 2025, Customs authorities at Chennai Port intercepted misdeclared goods worth ₹26.4 crore. Following a tip-off, the Special Intelligence and Investigation Branch (SIIB) examined seven containers that had arrived aboard two vessels from China. One container was discovered to hold a substantial quantity of perfumes and cosmetics, valued at approximately ₹18.9 crore, which had been falsely declared as plastic items and photo frames. Officials emphasized that

¹⁰S.K. Verma, *Enforcement of Intellectual Property Rights: TRIPS Procedure & India*, *Journal of the Indian Law Institute*, Vol. 46, No. 2 (Intellectual Property Rights Special Issue, April–June 2004), pg. 191

such misdeclaration is a punishable offence and highlighted that the import of cosmetics is subject to regulation under the Drugs and Cosmetics Act. Additionally, Intellectual Property Rights experts confirmed that the seized items were counterfeit.¹¹

In the year 2017, the Special Intelligence and Investigation Branch (SIIB) of Chennai Seaport Customs uncovered a major case of counterfeit goods, seizing around 12,000 pairs of fake branded shoes valued at approximately ₹3.5 crore from a container originating from China.

This isn't an isolated incident—such shipments continue to arrive at the Chennai seaport, often concealed under false declarations such as “unbranded ladies' purses,” “car hanging accessories,” or “porcelain tiles.” The counterfeit shoes, imitating well-known brands like Adidas, Nike, and Reebok, are difficult to distinguish from the originals. What makes detection even more challenging is that the counterfeiters print fake Unique Product Codes (UPCs) that closely resemble genuine ones, making it nearly impossible for ordinary consumers to tell the difference.¹²

Operational and Institutional Challenges

Despite having a legal framework in place through the Customs Act, 1962, the IPR (Imported Goods) Enforcement Rules, 2007, and the Trade Marks Act, 1999, India continues to face numerous operational and institutional challenges in enforcing trademark rights at its borders. These challenges significantly undermine the effectiveness of Customs authorities in curbing the entry of counterfeit goods and ensuring compliance with the TRIPS Agreement.

1. Lack of Technical Expertise

One of the most pressing operational challenges is the limited technical knowledge among Customs officers regarding product authentication and trademark infringement. Infringement often requires nuanced evaluation, including the ability to distinguish between genuine and counterfeit goods, which can be especially difficult in sectors like electronics, fashion, and pharmaceuticals. Without adequate training or access to technical experts, enforcement becomes inconsistent and inefficient.

¹¹*Misdeclared Goods Worth ₹26.4 Crore Seized at Chennai Port*, The Times of India (12 June 2025), available at: <https://timesofindia.indiatimes.com/city/chennai/misdeclared-goods-worth-26-4-crore-seized-at-chennai-port/articleshow/119917104.cms>, last accessed 30 June 2025.

¹²*12,000 Pairs of Fake Branded Shoes Seized*, The Times of India, August 31, 2017, available at: <https://timesofindia.indiatimes.com/city/chennai/12k-pairs-of-fake-branded-shoes-seized/articleshow/60330746.cms> (last accessed July 8, 2025).

2. Inadequate Infrastructure and Technology

Many Customs checkpoints, especially inland container depots and smaller ports, lack modern screening and inspection tools. The absence of AI-based detection systems, image databases, and real-time product verification tools hampers proactive enforcement. As a result, counterfeit goods may pass through undetected or may be wrongfully detained, leading to delays and legal complications.

3. Weak Stakeholder Awareness

Another institutional gap is the lack of awareness among right holders—particularly domestic MSMEs—about the availability of the Recordation System and their right to seek border protection. On the other hand, importers and customs agents often lack knowledge of IP-related clearance protocols, resulting in procedural disputes and friction.

4. Inter-Agency Coordination Deficits

Effective enforcement requires coordination between the Customs Department, the Office of the Registrar of Trade Marks, the police, and judiciary. However, the lack of a structured mechanism for information-sharing and coordinated action leads to duplication, delays, or inaction. Unlike in jurisdictions such as the USA or EU, there is no centralized IP enforcement task force in India.

5. Delays in Adjudication and Disposal

Once infringing goods are detained, the process for adjudication and disposal can be time-consuming and bureaucratic. Delays in issuing notices, conducting hearings, and deciding on confiscation or release often make the system inefficient, discouraging trademark owners from using it proactively.

6. Risk of Wrongful Detention

Customs officials often act on precautionary grounds when detaining suspected infringing goods. However, this can lead to the wrongful detention of legitimate shipments, causing losses to importers and opening the door to legal claims against the government. The absence of a clear appeal or compensation mechanism adds to the complexity.

7. Limited Data and Monitoring

There is also a lack of centralized data on trademark enforcement actions taken by Customs across the country. The absence of published statistics on seizures, pending adjudications, and outcomes hampers research, transparency, and policymaking.

International Trademark Association (INTA): Suggestions to Indian Customs

The increasing prevalence of counterfeiting poses a severe threat to India's economy, consumer safety, and legitimate businesses. In response, the International Trademark Association (INTA), representing 6,500 member organizations globally, urges the Central Board of Indirect Taxes and Customs (CBIC) to adopt specific recommendations to strengthen border enforcement measures. INTA's Anti-Counterfeiting Committee (ACC), through its South Asia Subcommittee, has compiled these recommendations based on widespread consultation and enforcement experience.

INTA commends CBIC for its collaborative and proactive stance in engaging with stakeholders. However, challenges still persist that hinder the effective interdiction and disposal of counterfeit goods, often placing undue burdens on right holders.

Firstly, while the IPR (Imported Goods) Enforcement Rules, 2007, prescribe timelines for right holders to join proceedings after goods are interdicted (3 to 7 days for perishable and 10 to 20 days for non-perishable goods), no definite timeframe exists for adjudication and destruction of these goods. As the right holder bears the costs of demurrage and destruction, prolonged delays increase financial burdens. INTA recommends a fixed timeline for adjudication and disposal, not exceeding one year from the date of interdiction.

Secondly, current rules require right holders to submit a security deposit (25% of the bond value) within three days of receiving valuation from Customs. Since valuations often come months after the interdiction, and given the procedural and banking formalities involved, this 3-day window is impractical. INTA recommends extending the submission deadline to five working days and reducing the deposit amount to 10% of the bond value, easing compliance for right holders.

Thirdly, payment modes are currently restricted to demand drafts, causing inconvenience. INTA suggests integrating digital payment options such as UPI, net banking, and card payments to streamline fee submissions and reduce processing delays.

Fourth, to enhance enforcement, INTA recommends conducting regular IPR sensitization and training programs for law enforcement officers, especially at institutions like the Sardar

Vallabhbbhai Patel National Police Academy. A specific module on counterfeiting and trademark infringement, supported by right holders and agencies like CIPAM, would build necessary expertise among officers.

Fifth, INTA proposes regular product identification training for Customs officials. A structured system should be developed for accepting and evaluating proposals from right holders to train officers in identifying counterfeit goods and brand-specific security features. Ports with higher cargo volumes should be prioritized.

Sixth, a lack of incentives for officers seizing counterfeit goods often demotivates enforcement. INTA suggests introducing recognition or reward schemes to encourage proactive interdiction of infringing goods.

Finally, right holders face challenges in the disposal of pending cases and return of bank guarantees after adjudication. This is largely due to multiple departments within Customs handling different stages of the interdiction process. INTA recommends streamlining internal coordination and establishing clear procedures to ensure timely return of bank guarantees post-disposal. It is therefore essential to simplify the current procedures and ensure that Bank Guarantees are returned to right holders promptly once the cases are resolved.¹³

Powers and Functions of the Customs Authorities in India

The Customs authorities in India, under the supervision of the Central Board of Indirect Taxes and Customs (CBIC), derive their powers from the Customs Act, 1962. With the introduction of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, their role in protecting trademark rights at the borders has become crucial. Below are the key powers and functions with corresponding legal provisions:

1. Regulatory and Enforcement Functions

- Section 11 of the Customs Act, 1962

This provision empowers the Central Government to issue notifications prohibiting the import or export of goods for the protection of IPRs, among other interests (public

¹³International Trademark Association (INTA), *Recommendations to Indian Customs* (Sept. 17, 2024), available at: https://www.inta.org/wp-content/uploads/public-files/advocacy/testimony-submissions/20240917_INTA-Recommendations-to-Indian-Customs.pdf (last accessed July 8, 2025).

morals, health, environment, etc.). Basis for the IPR (Imported Goods) Enforcement Rules, 2007, which operationalize border enforcement of trademarks.

2. Screening and Examination of Goods

- **Section 17 of the Customs Act, 1962**

Customs officers are authorized to verify the correctness of the assessment of duty, including examination and testing of goods.

- **Rule 5 of the IPR Enforcement Rules, 2007**

Allows Customs to suspend clearance of goods suspected to infringe a recorded trademark.

Officers inspect consignments and use trademark recordation data for early detection of counterfeit goods.

3. Suspension and Detention Powers

- **Rule 5 of the IPR Enforcement Rules, 2007**

Allows officers to suspend clearance for 10 working days when infringing goods are suspected.

- **Rule 7 provides for extension upon request by the right holder for an additional 10 days.**

This facilitates swift administrative action while giving right holders time to seek judicial relief.

4. Seizure and Confiscation

- **Section 110 of the Customs Act, 1962**

Authorizes officers to confiscate goods suspected of being subject to seizure.

Section 111(d) of the Customs Act, 1962

States that goods imported in violation of a prohibition (e.g., under Section 11) are liable to confiscation.

- **Rule 10 of the IPR Enforcement Rules, 2007**

Provides for destruction or disposal of infringing goods at the expense of the right holder, with no compensation to the importer.

5. Adjudication Powers

- **Section 122 of the Customs Act, 1962**

Grants Customs officers the power to adjudicate confiscation and penalty proceedings.

- **Section 124 provides for issuance of show cause notices and opportunity to be heard before confiscation.**

Officers act in a quasi-judicial capacity during IPR disputes involving suspected

counterfeit goods.

6. Coordination with Trademark Authorities and Right Holders

- No specific section in the Customs Act, but operationalized under:
- Rule 3 and Rule 4 of the IPR Enforcement Rules, 2007

These provide for application and recordation of registered trademarks with Customs. Coordination is done via the online IPR Recordation Portal, linking Customs and the Controller General of Patents, Designs and Trade Marks (CGPDTM).

7. Protection Against Smuggling and Fraud

- Section 111(i) & 111(l) of the Customs Act, 1962
- Goods imported through false declaration, concealment, or fraud are liable to confiscation.
- Section 135 of the Customs Act, 1962

Imposes punishment, including up to 7 years of imprisonment and fines, for acts of smuggling or duty evasion, with these penalties also applicable to the illicit import of counterfeit goods. Many counterfeit trademark goods enter through misdeclaration or smuggling, making anti-smuggling powers critical in IPR enforcement.

The Customs Act, 1962 and the 2007 IPR Rules provide Indian Customs authorities with a broad spectrum of powers—from regulation, inspection, suspension, and seizure, to adjudication and penalty. These powers, if effectively implemented with adequate training and inter-agency coordination, can transform Indian Customs into a robust frontline defender against trademark infringement and counterfeit goods at the border.

Powers of the Registrar of Trade Marks in Border Enforcement in India

While the primary responsibility for enforcing trademark rights at India's borders lies with the Customs authorities under the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, the Registrar of Trade Marks—appointed under the Trade Marks Act, 1999—plays a vital supportive and regulatory role in the process. Although the Registrar does not have direct authority over border enforcement activities, his statutory functions, such as trademark registration, maintaining records, and legal adjudication, greatly influence the efficiency and effectiveness of Customs enforcement actions.

1. Power to Register Trademarks (Sections 18–23)

The Registrar's primary authority is vested in granting trademark registrations as outlined in

Sections 18 to 23 of the Trade Marks Act, 1999. Under the 2007 IPR Rules, only trademarks that are officially registered qualify for recordation with Customs for proactive border enforcement. Without valid registration, trademark owners are not entitled to seek Customs intervention, making registration a mandatory requirement.

- **Section 18:** Allows an individual or legal entity to apply for registration of a trademark.
- **Section 23:** On satisfaction, the Registrar may register the trademark and issue a registration certificate.

2. Maintenance of Trademark Register (Sections 6 & 28)

Under Section 6, the Registrar is responsible for maintaining the Register of Trademarks, containing details of registered marks, names of proprietors, user claims, and class of goods/services. Section 28 confers exclusive rights on the registered proprietor and allows for enforcement of such rights.

Customs authorities frequently consult the Register to verify the legitimacy of a trademark, and the accuracy of this database, maintained by the Registrar, directly impacts the speed and efficiency of Customs action.

3. Rectification or Cancellation of Trademark (Section 57)

If a registered trademark is wrongly registered or becomes deceptive, Section 57 empowers the Registrar to rectify or cancel the registration. This ensures that only valid and enforceable trademarks benefit from Customs enforcement, preventing abuse of the system.

4. Hearing and Determination of Disputes (Section 127)

The Registrar has quasi-judicial powers to adjudicate disputes related to opposition, rectification, and assignment of trademarks. These decisions can influence whether a mark qualifies for border enforcement and whether Customs authorities should take action.

5. Coordination with Customs Authorities

Although not expressly mentioned in the statute, the Registrar may, upon request, assist Customs by verifying ownership, licensing, or status of trademarks. This informal cooperation strengthens border enforcement.

Thus, while the Registrar of Trade Marks does not have direct border enforcement powers, his statutory functions under the Trade Marks Act, 1999—particularly those under Sections 6, 18, 23, 28, 57, and 127—provide the legal foundation for Customs to identify, verify, and act

against infringing goods. The Registrar's role is pivotal in enabling a robust and reliable border enforcement regime in India.

Comparative Analysis: USA, EU, China

Effective border enforcement plays a pivotal role in preventing the transnational movement of counterfeit and infringing trademark goods. Countries with large trade volumes and international shipping activity have developed robust frameworks to empower customs authorities in this domain. This section presents a comparative legal analysis of the trademark enforcement regimes through customs authorities in the United States, the European Union, and China. The analysis focuses on statutory frameworks, procedural mechanisms, and practical enforcement challenges and strengths in each jurisdiction.

1. United States

The United States adopts a proactive approach towards trademark enforcement at its borders, governed by a combination of trademark and customs laws. The primary legislation includes the *Lanham Act* (15 U.S.C. §§ 1051 et seq.), which governs trademark registration and protection, and the *Tariff Act of 1930* (particularly §§ 1526 and 1337), which empowers customs to exclude infringing goods. The U.S. Customs and Border Protection (CBP), operating under the Department of Homeland Security, is responsible for enforcement.

Trademark owners can record their federally registered marks with the CBP through the Intellectual Property Rights (IPR) e-Recordation system. Once recorded, CBP officers are authorized to seize counterfeit or infringing goods at the border, detain them, and initiate forfeiture proceedings. The CBP also provides an online IPR Search Tool and training resources to facilitate enforcement.

A significant strength of the U.S. regime lies in its centralized enforcement and detailed regulatory guidance, including Title 19 of the Code of Federal Regulations. Additionally, the U.S. system offers protection against grey market imports through Section 526 of the Tariff Act.¹⁴ However, the regime relies heavily on rights holders to initiate recordation and provide support, such as product identification guides, for effective interdiction.

In April 2025, officers from U.S. Customs and Border Protection (CBP) at the Rochester Port

¹⁴<https://www.govinfo.gov/content/pkg/COMPS-8183/pdf/COMPS-8183.pdf>

of Entry intercepted multiple shipments containing various items falsely labelled as luxury designer products, including handbags, wallets, apparel, watches, shoes, and more. After a thorough examination, the officers confirmed that all the goods were counterfeit and displayed fake trademarks. The entire consignment was confiscated. If the items had been authentic, their estimated retail value would have been around \$198,100. This seizure highlights CBP's continued commitment to blocking counterfeit products from entering the U.S. market and safeguarding both consumers and brand owners.¹⁵

In June 2025, U.S. Customs and Border Protection (CBP) officers at the Rochester Port of Entry confiscated a significant shipment of counterfeit merchandise. The consignment included imitation designer handbags, wallets, apparel, watches, sneakers, along with cosmetics, beauty items, and dietary supplements. Following a detailed inspection, officers concluded that all the goods were fake and bore counterfeit trademarks, leading to their seizure. Even more concerning, the beauty products and supplements were also in violation of the Federal Food, Drug, and Cosmetic Act, raising serious concerns about consumer safety. These items could pose significant health risks to unsuspecting consumers. Had the entire shipment been genuine, its total Manufacturer's Suggested Retail Price (MSRP) would have been approximately \$575,000. This seizure highlights CBP's continued efforts to protect consumers and public health by preventing the entry of counterfeit and potentially dangerous goods into the U.S. market.¹⁶

2. European Union

In the European Union, the enforcement of trademark rights by customs authorities is governed by a specific regulation (*EU*) No. 608/2013¹⁷, which provides the framework for customs actions against goods suspected of infringing intellectual property rights. This is complemented by *Directive (EU) 2015/2436*¹⁸, which harmonizes trademark law across member states, and the *Union Customs Code* (Regulation (EU) No. 952/2013)¹⁹, which sets out general procedural rules.

¹⁵*CBP Seized More Than \$190,000 in Counterfeit Products*, U.S. Customs and Border Protection, April 24, 2025, available at: <https://www.cbp.gov/newsroom/local-media-release/cbp-seized-more-190000-counterfeit-products> (last accessed July 8, 2025).

¹⁶*CBP Seizes Counterfeit Products Valued Over Half a Million Dollars*, U.S. Customs and Border Protection, June 27, 2025, available at: <https://www.cbp.gov/newsroom/local-media-release/cbp-seizes-counterfeit-products-valued-over-half-million-dollars> (last accessed July 8, 2025).

¹⁷Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 12 June 2013

¹⁸Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015

¹⁹Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013

Trademark owners may file an Application for Action (AFA) with national customs authorities or submit a Union AFA for EU-wide enforcement. Customs authorities may detain suspicious goods for ten working days (extendable), during which the rights holder can request destruction of the goods or initiate legal action. If the importer raises no objections, a streamlined procedure for destroying the goods can be followed.

A unique strength of the EU system is its harmonized enforcement mechanism across member states through a single Union application. Furthermore, specialized provisions exist for small consignments, addressing the surge in counterfeit goods traded via e-commerce. However, disparities in enforcement efficiency among member states and the increasing challenge of monitoring postal shipments present ongoing limitations.

In 2023, the European Union witnessed a dramatic surge in counterfeit goods, with law enforcement authorities detaining a staggering 152 million fake items—marking a 77% increase compared to the previous year. The estimated value of these seized counterfeit products, intercepted both at EU borders and within the internal market, reached €3.4 billion, reflecting a 68% rise from 2022. These statistics were published in a collaborative study conducted by the European Union Intellectual Property Office (EUIPO) and the European Commission. The most commonly seized counterfeit goods across the EU included toys and games, CDs/DVDs, labels, tags, stickers, and packaging materials. Together, these items made up nearly three-quarters of all counterfeit products detained. One common tactic used by counterfeiters involves shipping cheap packaging materials separately from the unbranded products, which are later assembled within the EU to evade detection by authorities.

A handful of EU Member States accounted for the vast majority of these seizures. Italy led by a significant margin, responsible for over 74% of the total counterfeit items detained and over 58% of their estimated value. Other major contributors included France, Romania, Spain, the Netherlands, Bulgaria, Germany, Hungary, Belgium, and Greece—collectively accounting for 98% of all EU-wide seizures.

China remained the leading source of counterfeit goods entering the EU, followed by Hong Kong and Türkiye. While China's main exports involved general counterfeit goods, Hong Kong was particularly noted for labels and stickers, and Türkiye for fake clothing. Most counterfeit items were shipped through postal and express courier services, underlining the

urgent need for stronger controls in these channels.²⁰

3. China

China, traditionally perceived as a major source of counterfeit goods, has made substantial legal and administrative improvements in border enforcement of trademarks. The principal legislations include the *Trademark Law of the PRC (2019 Amendment)*²¹, the *Customs Law of the PRC*, and the *Regulations on Customs Protection of Intellectual Property Rights* (last amended in 2018).

The General Administration of Customs of China (GACC)²² oversees enforcement. Rights holders must record their trademarks with GACC, which maintains a central database of IP rights. Upon detection of suspected infringing goods, customs may act ex officio or on the application of the rights holder. If goods are detained, the rights holder must provide a security deposit and initiate judicial or administrative action within a prescribed period.

China's customs enforcement is distinguished by its high volume of seizures and proactive detection of infringing goods. Its centralized and comprehensive recordation system, combined with strong ex officio powers, has led to effective interdictions. However, inconsistent enforcement standards across different customs regions and occasional lack of transparency remain key concerns.

In April 2024, Quanzhou Customs, operating under Xiamen Customs, intercepted a shipment of over 139,000 bags of condiments—including sour soup powder, monosodium glutamate, and fried chicken powder—bearing counterfeit “KNORR” and “AJINOMOTO” trademarks. After verification by the legitimate trademark holders, the goods were confirmed as infringing, prompting Customs to detain the shipment and issue an administrative penalty. This involved seizing the counterfeit goods and levying a penalty on the exporter.

As part of its broader enforcement strategy, Xiamen Customs also turned its attention to

²⁰*Counterfeit Clampdown: EU Seizes Record 152 Million Fake Items Worth 3.4 Billion EUR in 2023*, European Union Intellectual Property Office (EUIPO), June 26, 2024, available at: <https://www.euiipo.europa.eu/en/news/observatory/counterfeit-clampdown:-eu-seizes-record-152-million-fake-items-worth-3-4-billion-eur-in-2023> (last accessed July 8, 2025).

²¹*Trademark Law of the People's Republic of China (2019 Amendment)*, (Adopted at the 24th Session of the Standing Committee of the Fifth National People's Congress on August 23, 1982

²²*Laws and Regulations*, General Administration of Customs of the People's Republic of China, available at: <http://english.customs.gov.cn/Legislation/Laws> (last accessed July 8, 2025).

imported counterfeit goods. They assembled a team of experts to assess infringement risks, thoroughly reviewed customs clearance records and past cases, and analyzed trade routes and logistics patterns. This data-driven approach helped identify high-risk goods and trends in smuggling tactics.

Xiamen Customs made two more significant seizures later that year. In June and again in November 2024, officials confiscated a combined total of 213,600 bags of counterfeit chicken essence products that infringed on the exclusive trademark rights of “AJINOMOTO” and “Maggi.” These actions underscore the increasing vigilance and strategic enforcement being carried out by Chinese Customs authorities to combat trademark infringement and protect both brand owners and consumers.²³

4. Comparative Overview

In sum, each jurisdiction offers a distinct model of customs enforcement in trademark protection. The United States emphasizes centralized procedures, robust regulatory tools, and protection against parallel imports, but relies heavily on recordation and proactive involvement of rights holders. The European Union offers a harmonized yet decentralized enforcement structure, with the advantage of Union-wide applications, though it faces challenges in dealing with enforcement inconsistencies across member states and the surge in small parcel shipments due to e-commerce. China has developed into a leading jurisdiction in terms of customs seizures, leveraging a mandatory and centralized recordation system supported by strong ex officio powers, although enforcement still varies across different customs regions.

India, as a growing economy and a significant market in the global supply chain, has aligned its border enforcement framework with international standards, particularly the TRIPS Agreement. Customs enforcement in India is governed by the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, framed under the Customs Act, 1962. India maintains a customs recordation system through the ICEGATE portal, wherein trademark owners can register their rights. Upon recordation, Indian Customs is empowered to suo motu or upon application, suspend clearance of suspected infringing goods. While India’s system is

²³*China Releases Typical Cases of Intellectual Property Protection by China Customs in 2024: China Facing Imported Counterfeits Due to Manufacturing Moving to Other Countries*, China IP Law Update, May 7, 2025, available at: <https://www.chinaiplawupdate.com/2025/05/china-releases-typical-cases-of-intellectual-property-protection-by-china-customs-in-2024-china-facing-imported-counterfeits-due-to-manufacturing-moving-to-other-countries/> (last accessed July 8, 2025).

TRIPS-compliant and supports both reactive and proactive enforcement, practical challenges include low levels of awareness among right holders, limited training among customs officers, and resource constraints, especially at minor ports and airports.

Thus, while the USA, EU, China, and India all support border enforcement of trademark rights, the nature and efficiency of their customs mechanisms vary. The USA and EU represent mature and structured enforcement ecosystems. China, with high-volume seizures and proactive authority, demonstrates strong operational effectiveness. India, though relatively nascent in its border IPR enforcement journey, reflects a rapidly improving regime backed by legal infrastructure but constrained by enforcement and awareness gaps. These differences underscore the need for greater harmonization, capacity building, and international cooperation to combat the global trade in counterfeit goods effectively.

The United States, European Union (EU), and China have established sophisticated legal and administrative frameworks for customs enforcement of trademark rights, which are significantly more advanced in certain respects when compared to India. These jurisdictions have developed systems that integrate legislative clarity, technological innovation, and institutional coordination to combat the growing menace of counterfeit goods at their borders. In the United States, the enforcement of trademark rights at the border is governed by Title 19 of the United States Code, specifically Section 1526 of the Tariff Act of 1930²⁴. The U.S. Customs and Border Protection (CBP), under the Department of Homeland Security, plays a central role in implementing these provisions. Trademark owners can register their trademarks with the CBP using the online e-Recordation system, which empowers customs officers to detain, seize, and destroy counterfeit goods entering the country. The CBP also operates the Automated Commercial Environment (ACE), a real-time tracking and flagging system that enhances risk profiling. Additionally, the National IPR Coordination Center facilitates cooperation between multiple federal agencies, resulting in highly coordinated enforcement efforts.

The European Union, on the other hand, operates under a harmonized legal structure that is centrally regulated across its member states. The primary legislative instruments are Regulation (EU) No. 608/2013 and its implementing Regulation No. 1352/2013, which standardize customs enforcement of IP rights, including trademarks. Trademark holders can

²⁴*Tariff Act of 1930*, Pub. L. No. 71-361, 46 Stat. 590 (1930)

file an Application for Action (AFA) through the centralized COPIS database, which connects customs authorities across all EU countries. Notably, the EU allows simplified destruction procedures for counterfeit goods without the need for court intervention if the importer does not object. Customs authorities are also empowered to seize goods in transit that infringe IP rights—a critical feature that strengthens the EU’s border enforcement regime. The involvement of agencies like the EUIPO and Europol further enhances cross-border intelligence and operational effectiveness.

China has significantly strengthened its customs enforcement mechanisms, especially after joining the World Trade Organization (WTO) and aligning its laws with the TRIPS Agreement. The Customs Law of the People’s Republic of China, along with the Regulations on Customs Protection of Intellectual Property Rights (revised in 2020), forms the core legal framework.

The General Administration of Customs of China (GACC) enables right holders to proactively record their trademarks, and customs authorities are authorized to seize, confiscate, and destroy counterfeit goods. China’s enforcement regime stands out for its integration of advanced technologies such as artificial intelligence, big data analytics, and blockchain-based tracking systems, which are used for identifying patterns in counterfeit trade. However, trademark owners in China are required to furnish a security deposit when requesting detention, and there remain concerns about transparency and limited importer remedies.

In contrast, India’s legal framework, though compliant with TRIPS, is more limited in its operational effectiveness. Customs enforcement is primarily governed by the Customs Act, 1962 and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The recordation system with Indian Customs is underutilized, and many right holders are either unaware of or discouraged by the procedural complexities. The system is not integrated with real-time digital monitoring or AI-based risk profiling. Unlike the EU or China, India does not allow customs to intercept goods in transit or intended for export, focusing solely on imported goods. Moreover, inter-agency coordination between Customs and the Controller General of Patents, Designs and Trademarks (CGPDTM) is largely informal and lacks institutional robustness. The limited training provided to customs officers and the absence of a centralized intelligence mechanism further weaken enforcement.

In summary, while India possesses the basic legal framework for trademark enforcement at the

borders, the systems in the USA, EU, and China are far more advanced in terms of technological integration, procedural efficiency, and inter-agency coordination. These jurisdictions also provide more practical tools for right holders, such as simplified destruction processes, centralized databases, and stronger protections against in-transit counterfeits. India can draw valuable lessons from these systems, particularly in adopting digital tools, enhancing customs training, and expanding the legal scope of border measures to effectively combat trademark infringement.

Criteria for Determining Infringement by the Customs

The identification and seizure of trademark-infringing goods at India's borders by Customs authorities are regulated through a mix of legal provisions and procedural directives. While the Customs Act, 1962, and the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, establish the legal foundation, there is no single, comprehensive statute outlining the exact standards and procedures Customs officials use to assess trademark infringement. Rather, these are shaped by a combination of trademark law principles, administrative judgment, and information provided by trademark owners.

First and foremost, the main legal foundation for Customs enforcement is rooted in Section 11 of the Customs Act, 1962²⁵, which empowers the Central Government to prohibit import or export of goods to protect intellectual property rights. Pursuant to this, the IPR (Imported Goods) Enforcement Rules, 2007²⁶ were framed, enabling trademark proprietors to record their rights with the Customs authorities. Once the recordation is accepted, the onus shifts to Customs officers at various ports and airports to identify suspicious consignments and determine whether the goods in question infringe registered trademarks.

The determination process primarily hinges on a visual and factual comparison of the imported goods against the details submitted by the trademark owner. This includes examining the similarity of the marks, logos, packaging, labeling, product design, and any accompanying documents such as invoices, declarations, or shipping labels. Customs officers may rely on product manuals, photographs, authentication guidelines, and sample comparisons provided by the trademark owner during the recordation process. This assists them in forming a prima

²⁵*The Customs Act, 1962*, Act No. 52 of 1962, enacted by the Parliament of India

²⁶*Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*, notified by the Government of India, Ministry of Finance (Department of Revenue), Notification No. 47/2007-Customs (NT), dated 8 May 2007

facie opinion as to whether the goods are counterfeit or infringe the recorded trademark.

One of the key practical tools in this context is the Recordation System, operated through the Indian Customs IPR portal. This system enables trademark owners to upload detailed information about their registered trademarks, including images, brand guidelines, and contact details for follow-up verification. Once a trademark is recorded, Customs' risk management system (RMS) flags suspicious shipments for manual inspection based on matching criteria.

Nevertheless, the procedure is not without its difficulties. Indian Customs authorities are not trademark adjudication bodies and must act within the limited scope of their administrative mandate. Hence, the determination of infringement is essentially preliminary and provisional in nature. If doubt persists, the consignment is suspended, and the trademark holder is informed. Under Rule 7 of the IPR Rules, 2007, the right holder must confirm the infringement within five working days, extendable to another five, failing which the goods may be released.

While there is no explicit "test" laid down for Customs officers akin to the tests used by civil courts under the Trade Marks Act, 1999 (such as the "likelihood of confusion" or the "essential features" test), in practice, officers tend to adopt a simplified version of these principles, guided by brand owner inputs and training received from IPR cells.

The criteria used by Indian Customs to determine trademark infringement are largely operational and rooted in practical guidelines and visual assessment, rather than formal legal tests. This makes Customs enforcement an important—but limited—line of defense, necessitating greater procedural clarity, enhanced officer training, and technology-enabled decision support systems to ensure effective trademark protection at the borders.

Conclusion

Trademark enforcement at India's borders is a critical but underutilized tool in the fight against counterfeit goods. This study has demonstrated that while India has established a TRIPS-compliant legal and administrative framework through the Customs Act, 1962 and the IPR (Imported Goods) Enforcement Rules, 2007, the implementation of these laws faces several institutional and operational challenges. These include inadequate training of Customs personnel, low awareness among right holders—especially MSMEs—limited use of technology, and delays in adjudication and disposal of seized goods. The Recordation System,

although conceptually sound, suffers from underuse and structural inefficiencies that limit its potential as a preventive enforcement mechanism.

Comparative insights from jurisdictions like the USA, EU, and China reveal more mature, integrated, and technologically advanced enforcement regimes. These models underscore the importance of central databases, real-time risk profiling, inter-agency collaboration, and capacity-building—elements that India must actively pursue to enhance its border control capabilities.

To effectively transform Indian Customs into a robust frontline enforcer of trademark rights, a multi-pronged approach is necessary: legal reform, procedural streamlining, stakeholder sensitization, technological upgrades, and inter-ministerial coordination. Strengthening these areas will not only support rights holders but also protect consumer interests, preserve market integrity, and fulfill India's international obligations. As global trade becomes more complex and digitized, India's Customs must evolve into a more responsive, well-equipped, and knowledge-driven agency capable of proactively addressing the growing threat of trademark infringement at its borders.

