

A Glimpse of Chittagong Sea Port: Encountering the Barriers of IPR Enforcement to Combat Trademark Infringement

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Abstract

Bangladesh a South-Asian developing country with a very important geo-political location has been struggling to move forward as an emerging mid-income nation. The socio-economic indicators demonstrate the rising economy and culturally enriched history. Nevertheless, the menacing darkness of Intellectual Property Rights (IPR) infringement has been taking toll from the economy, society and human life. Lack of awareness and coordination among the Right Holders, government agencies and general public are the major hurdle to surmount this crisis. The century old legal framework of IPR, even after getting modified for this globalized world failed to ensure effective enforcement. Being the main Border Management government agency, Customs is obligated to safeguarding society from the ominous shadow of counterfeit goods by preventing its trading.

Unfortunately at present Bangladesh Customs has no specific organizational structure for managing Intellectual Property Rights. This study would try to identify the barriers and facilitators for IPR enforcement to identify Trademark infringements at Chittagong sea port Customs station which handles 80% share of total trade of the country. Mixed methodology would be applied to gather data through questionnaire surveys, interviewing Japan Customs officials and literature review. By analyzing the data some recommendations on the findings of this study would tried to be provided for strengthening IPR enforcement in 'Trade mark' infringement.

Keywords: Intellectual property rights enforcement, globalization, Trademark infringement.

Unfortunately at present Bangladesh Customs has no specific organizational structure for managing Intellectual Property Rights , precisely ‘Trademark’

which causes:

- Threat for securing the society
- Threat for securing public life from counterfeit articles in Bangladesh

There are 2 Major sea ports Chittagong and Mongla,

20 and port stations, 3 international and 12 domestic airports.

Among which ‘Chittagong port’ the largest deep water seaport and is the major gateway for the country’s trade with the outside world. It handles nearly 80% of the total trade of Bangladesh

Purpose of the Study

The purpose of this study was to evaluate the current situation of ‘Trademark infringement’ at Chittagong seaport Custom station to identify the barriers and facilitators to protect IPR to combat ‘trademark’ infringement.

Research Objectives/Questions:

The study had been tried to find out the following questions:

1. What is the current situation of ‘Trademark’ infringement at Chittagong seaport Custom station?
2. What are the barriers/challenges of IPR enforcement at Custom stations in Bangladesh?

3. What are the facilitators of IPR enforcement to encounter trademark infringement at Custom stations in Bangladesh?

4. What would be the ideal situation for IPR enforcement at Custom stations?

Literature Review:

- ❑ Disappointingly not much data and statistics are available in journal articles and Bangladesh Government's website regarding Intellectual Property Rights issue in Bangladesh.
- ❑ Precisely, no seizure report of trademark infringing goods at Chittagong seaport Customs station could be found while conducting this study.

Current IPR Situation in Bangladesh:

- Due to globalization a large number of counterfeit or trademark infringed goods, have been entering from China and India through the porous borders.
- As the prices of genuine products are enormously high, non-affordability drives people to go for counterfeits even though they are unwilling to purchase those.
- Regrettably attempts for educating public or creating consumer awareness are inadequate in Bangladesh.
- RHs are not aware of registering with Department of Patent Design and Trademark as well as with Customs.
- Bangladesh inherited its IPR related legislation dates back to the late nineteenth century from British-India. So, IPR is not new here but the practice of IPR is not widely flourished and the effective enforcement of these laws had been always in questions.

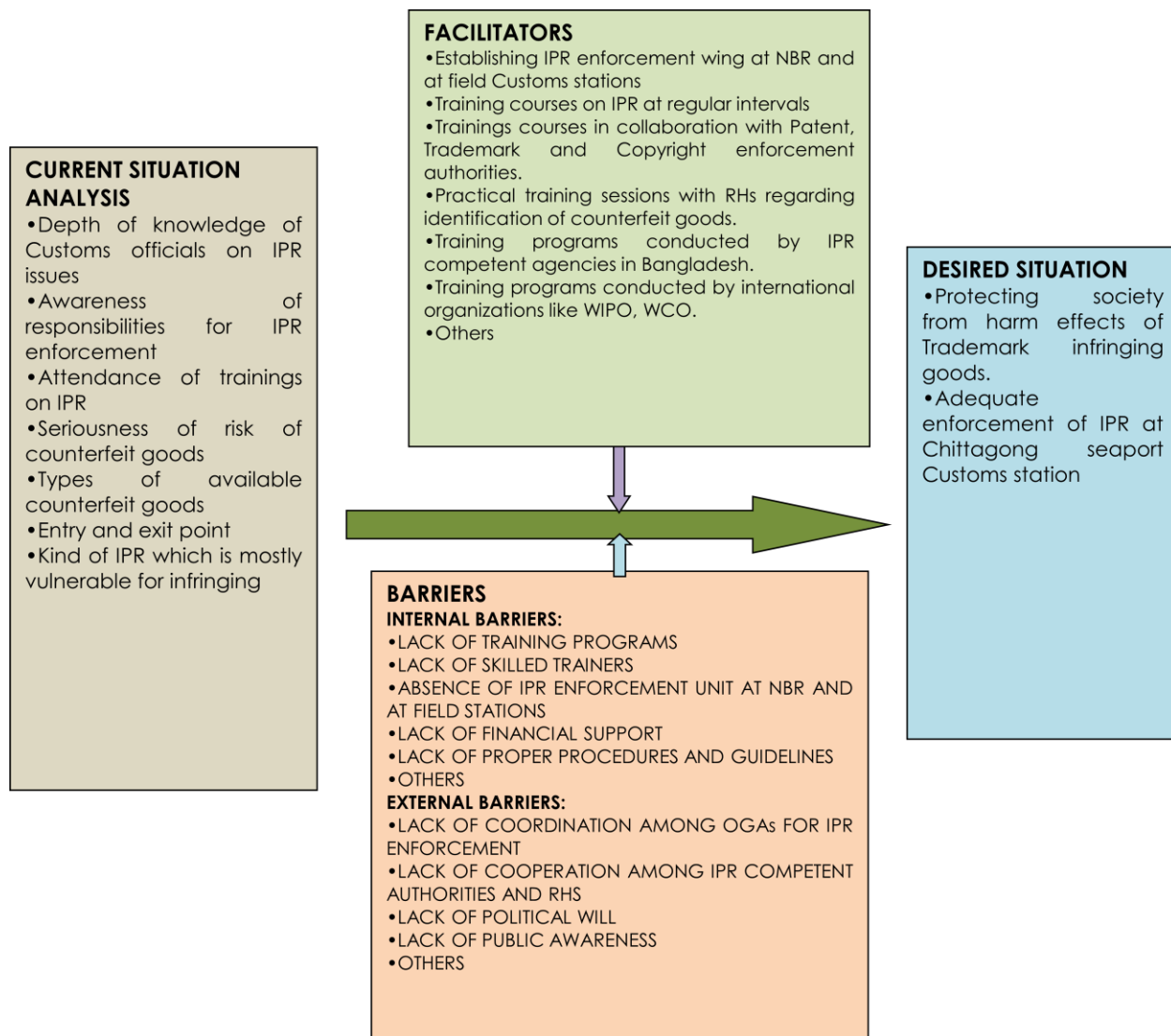
Current IPR situation in Bangladesh Customs:

- Since the current focus of Bangladesh Customs administration is only on securing government revenue, when tax is paid perfectly for legitimate trade, the customs officers do not seize any goods.
- Customs administration does not have any legal and technical expertise in IPR related issues.

Mixed methodology had been applied to gather data:

As a conceptual framework, this study used the force field analysis frame work developed by German-American psychologist **Kurt Zadek Lewin** in 1943

So the questionnaire was divided into four main areas. The Questionnaire followed force field analysis model:



The study has answered the first research question regarding the current situation of ‘Trademark’ infringement at Chittagong seaport Customs station from the respondents’ point of view:

- ❑ 90% of respondents consider Counterfeit goods pose a serious risk to Bangladesh.

- ❑ 58.6% of the respondents believe ‘Sea-port cargos’ are the mostly used way for trading counterfeit goods.
- ❑ 95.8% of the respondents think ‘trademark’ is most likely to suffer infringement.

From analyzing the survey data, the findings of the second research question pertaining to the barriers/challenges of IPR enforcement at Customs stations in Bangladesh discovered that,

As ‘Internal barriers’:

- ❑ ‘Lack of training programs’ had been considered by 83% of respondents
- ❑ ‘Lack of skilled trainers’ had been identified by 82.2% of respondents.
- ❑ ‘Absence of IPR enforcement unit at NBR and at field stations’ had been focused by 80.9% respondents.
- ❑ ‘Lack of proper procedures and guidelines’ was the concern for 74.4% respondents.

As ‘External barriers’:

- ‘Lack of cooperation among IPR competent authorities and RHs’ had been identified by 85.1% of respondents
- ‘Lack of coordination among OGAs for IPR enforcement’ had been focused by 80.8% of respondents.
- ‘Lack of political will’ was the concern for 72.3% of respondents.
- ‘Lack of public awareness’ had been identified by 78.7% respondents.

The **third research question** concerning the **facilitators of IPR enforcement** to encounter trademark infringement at Customs stations in Bangladesh had been revealed by analyzing the survey data:

- ❑ ‘Training courses on IPR enforcement at regular interval’ would be the best facilitator’, believed 93.8% of respondents.
- ❑ ‘Establishing IPR enforcement wing at NBR and at field Customs stations’ had been considered as a facilitator by 87.5% of respondents.
- ❑ ‘Training courses in collaboration with patent, trademark & copyright enforcement authorities’ might work as a facilitator thought 81.3% of respondents.
- ❑ ‘Practical training sessions with RHs on identification of counterfeit goods’ would be an effective measure believed 81.3% of respondents.
- ❑ ‘Training programs conducted by international organizations like, WIPO, WCO’ would be an option, deemed 75% respondents.
- ❑ ‘Campaign for Public awareness’ would improve the current IPR situation in Bangladesh assumed by 87.5% of respondents.

By analyzing the interview responses of Japan Customs officials as well as from literature review, the study has answered the fourth research question regarding what would be the measures for achieving ideal situation for IPR enforcement.

The issues those had been identified are:

- ❖ Establishing individual IPR wing within Customs administration,
- ❖ Capacity building activities,

- ❖ Good communication with RHs,
- ❖ Updating information on IPR,
- ❖ Simplified customs procedures,
- ❖ Coordinated actions by the government on IPR
- ❖ Conducting public opinion survey

The significant observation from the findings of this study is, the revealed ‘barriers’ and ‘facilitators’ are mostly within the scope of Bangladesh Customs.

Initiatives to achieve short term IPR enforcement:

Establishing Intellectual Property Rights (IPR) enforcement division:

- An IPR enforcement division within Bangladesh Customs is a basic need at present. So an IPR enforcement cell at National Board of Revenue (NBR) and simultaneously a branch of it at Chittagong seaport Customs station needed to be established immediately.
- A dedicated group of full time staff from different levels needed to be posted.
- By Gazette notification, simplified Customs procedures or rules regarding suspension of IPR infringing goods needed to be introduced at Chittagong seaport station.
- A registration system of RHs is required.
- An updated legislation would allow officials at IPR division of Chittagong Customs to take ‘Ex-officio’ action on suspected IPR infringing goods.

Initiatives for capacity building to achieve short term IPR enforcement :

.) Newly recruited officials are needed to be provided with trainings on IPR related basic and legal issues during their ‘Foundation training’.

2.) Frontline officers at NBR and at Chittagong seaport Custom station needed to be provided with basic knowledge along with the IPR related information tools and procedural rules.

3.) The Supervisory senior official at NBR or at Chittagong seaport sub branch needed to be provided with profound knowledge on counterfeit and pirated goods identification in addition with IPR related basic, advanced and legal issues. Besides they also need to learn how to analyze TRIPS Agreement.

4.) Training programs at regular interval needed to be arranged with competent authorities like DPDT to get sound knowledge on patent, trademark and copy right.

5.) To share knowledge on IPR related civil and criminal remedies and enforcement issues, time to time training programs needed to be organized in cooperation with Police, RAB and Border security forces.

Sending representatives to participate in WCO, WIPO, EU, ASEAN arranged IPR related trainings on global and regional context.

7.) ‘Product Identification Trainings’ needed to be arranged by RHs at regular intervals.

8.) ‘On the Job’ trainings on IPR related basic and advanced operational as well as legal issues, for 3 months or 6 months would be beneficial. Case studies on legal issues would be very much helpful.

9.) To create an IPR legal expert, every year one officer can be offered with a ‘Masters Program’ by using the support of the ‘international organizations’.

10.) ‘Train the trainee’ would be another effective measure. Since it saves time and resource as it helps the officers to share their obtained knowledge with co-worker.

Initiatives to improve public awareness:

- By using celebrities on TV shows,
- Posters in public place,
- Advertising by banners, in fashion magazines, movie magazines and on internet auction sites
- **Similar as Japan customs an exhibition rooms or Customs museum, with seized infringing goods can be displayed to the public.**

Initiatives to achieve long term IPR enforcement:

A consolidated strategy for IPR enforcement needed to be introduced for implementation by concerned ministries.