

Pirates not welcome

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The free trade zone of Iquique, most commonly known by its Spanish acronym, ZOFRI, is the most important commerce gateway in the north of Chile. Created in 1975 together with its brother in Punta Arenas, these privileged tax regimes were meant to promote industrial and commercial activities in two places with a lot in common: they are highly important ports and at the far ends of a very long and narrow country which happens to be highly centralised and forgetful of every city that is not Santiago.

As predicted, these free trade zones brought an explosive increase of every economic indicator in those regions. Iquique profited most from this new tax exemption regime, attracting importers and tourists from all over the country as well as foreign investors. In fact last year, commerce passing through Iquique's port was valued by the customs regional director in the region of US\$ 5.6 billion.

However, not all of the effects have been positive. The huge amount of merchandise matched with the diversity of the goods traded makes the control of products flowing in and out of Iquique an extremely difficult task.

The huge volume of products exchanged every day and their variety (from cars to sulphuric acid), the authorities' limited resources, and the great number of places of origin and destinations for the merchandise in transit all help to explain why the port of Iquique, and more specifically ZOFRI, is one of the most critical points for counterfeiting in Chile.

That the customs office of Iquique is the most complex border control in Chile is a fact that nobody can possibly refute. Therefore it is the most attractive port to be analysed in order to understand counterfeit control procedures, especially in their relation to ZOFRI.

Customs are committed

All sorts of controls need to be performed by the authority to ensure proper law enforcement. The customs office is responsible for detecting a huge amount of contraventions such as smuggling (of medications, cigarettes alcohol, etc), drug trafficking, breach of sanitary regulations, counterfeiting, and these days even the radiation of products imported from Japan.

All of these aspects of border control fall to a single team of experts in the customs office, who have limited resources and technology and face an anachronistic legal disposition that states that of every two

customs officers that retire only one of them may be replaced; all this at a time when globalisation is causing commercial exchanges in Iquique to increase by around 30 per cent per year.

Notwithstanding the facts, the customs office has made a great effort over the past few years to adapt its control mechanisms to the current times, working very closely with the World Customs Organization, obtaining very useful weapons from the Chilean legislator, and tightening its cooperation with other bureaus such as the investigations police, the internal revenue service, and the tribunals, to name a few. All of these measures have produced very positive results, especially in the fight against piracy.

The most important legal weapon in connection with IP enforcement was the enactment of law 19.912 in 2003 which allows custom officers to seize products that are evidently counterfeits of registered trademarks in Chile. This new power has permitted the customs office to increase its control over counterfeiting merchandise at ZOFRI year-on-year.

This necessary measure goes along with other efforts such as training customs personnel to be specialised in detecting counterfeit products. For this purpose, a special unit has been created in the organisation for IP enforcement.

It is important to have in mind that a large number of products introduced to ZOFRI are imported from Asian countries, with final destinations of Paraguay, Bolivia, Brazil or Peru, and therefore, has become a necessary stop in the piracy routes to South American markets. This has an obvious impact at this commercial complex, because even though major efforts are constantly being made to help ZOFRI become a well reputed commercial point, and a touristic attraction for foreign visitors, in reality, counterfeit goods coexist with the authentic products that are likely to be offered at this commerce. At this point the control mechanisms gain relevance. Every company authorised to import, store and commercialise products inside ZOFRI must report to the ZOFRI administrator – the regulator inside the “walled enclosure”.

This administrator has the power to admit a new user, control their activities and, if any infractions are detected, terminate their permission to operate at the free trade zone. This administrator is, by law, obligated to respond to the custom office's requirements, and is therefore a powerful ally in its mission of overseeing law enforcement inside ZOFRI.

The World Customs Organization (WCO) is also very important to the custom office as it acts as a role model for its internal organisation. In fact, one of the most important control divisions in customs is the risk control unit, formed in response to a WCO recommendation for all its members, which is in charge of detecting potentially risky goods entering or exiting the country. This division has a high standard of proceedings that permit over-the-average inspection of containers. The Chilean customs of Iquique is said

to inspect about 30 out of 400 containers entering the port every month, which amounts to 7.5 per cent. (The international standard is 1 per cent.) Of those containers inspected, the authority claims to have an 80 per cent to 90 per cent strike rate; in other words, nine out of 10 inspected containers store infringing products, which makes it clear that the choice of the controlled products is very successful. In general terms the information used to detect potentially illegitimate loads of goods are their country of origin, the route chosen by their transporters, payment method, and so on.

If these standards are so high, the question is why are there still high rates of counterfeiting activity at ZOFRI and Iquique in general? The explanations seem to be numerous. First of all, this is one of the most crowded borders in South America's Pacific coast, if not the most. The amount of products that enter and exit through this gateway makes it much more visible, even when – by percentage – it is not so different from others. A third reason is the laxity in the border controls from our neighbours that increases the difficulty of detecting minor smuggling activities through illegal border crossings, especially between our country and Bolivia or Peru.

Trademark owners are indebted

As technology is becoming more accessible every day, the quality of the fake products is increasingly similar to the originals, making it a harder task for control agents to recognise when they are facing counterfeits.

At this point coordination with the trademark owners becomes essential even though it is not always understood that way by their owners. Statistics provided by Iquique customs highlight this scenario very well. Last year IP infringements and contraband seized by customs amounted to over US\$510.5 million, with no legal action taken. Only US\$3.2 million of the seized toys, clothing, purses and shoes finally ended up in criminal claims or triggered a formal investigation request; which makes it clear that trademark owners and right holders are in debt to the public authorities in this matter.

A fluid relationship between the control entities and the trademark holders is a very important weapon to detect, pursue and discourage pirate commerce in general. One of our clients' active participation with the customs office and the public prosecutor made it possible this year to obtain the destruction over 2,500 well achieved counterfeit pairs of sneakers that were imported to ZOFRI. This important success would have not been possible if no legal action was taken by the owner of their trademark in Chile, considering that our law only permits the criminal investigation of these infractions if the victim requires. In other words, even when the products are evidently counterfeits, and detected by the authority, the lack of interest from the offended company has as a result the imminent release of the goods and their consequent entry to the market. This was probably the final destiny of that US\$ 511 million in products seized by the authority but not denounced by the respective right holders.

In conclusion, even though the fight against piracy is a titanic task that is to a great extent the responsibility of countries and their authorities, it is also a major challenge for the producers and owners of well-known brands. In this globalised world, where the exchange of products and information have lowered the boundaries between countries and contributed to improve almost to perfection the imitations of legitimate products, to be proactive and develop a fluent relationship with the different actors involved in IP law enforcement, helping to detect counterfeiting organisations, capacitate their experts in the elements that distinguish their original products from the pirates ones, and ultimately taking actions against the infringers to the bitter end.