

Operational Directions for the Enforcement Task Force against the Export of Pirated Optical Disks

(Publicly Announced by Directorate General of Customs on March 5, 2003 as per Letter Tai-Zong-Jyu-Ci-No.0920101452)

I. Basis:

On 17 February 2003 Premier Yu Shyi-kun directed the Ministry of Finance, in conjunction with the Ministry of Justice and Ministry of the Interior, to form a task force to create stringent mechanisms for the surveillance of optical disk exports. These Operational Guidelines are specially promulgated to coordinate pirated optical disk export enforcement operations by relevant units and to eradicate the export of contraband optical disks.

II. Organization:

The Enforcement Task Force against the Export of Pirated Optical Disks (the "Task Force") is jointly composed of units under the following agencies: the Ministry of Finance (Department of Customs Administration, Directorate General of Customs), Ministry of Economic Affairs (Intellectual Property Office, Joint Optical Disk Enforcement [JODE] Task Force, Anti-Counterfeiting Committee), Ministry of the Interior (National Police Administration, Aviation Police Bureau, Harbor Police Bureaus, Intellectual Property Rights Police Force), and Ministry of Justice (Ministry of Justice, High Court Prosecutors' Office, Investigation Bureau). It will handle the overall planning and coordination of pirated optical disk enforcement by the various ministries and commissions. The position of Task Force Convener will be held by Political Vice Minister of Finance Wang Der-shan; two Co-Convener positions will be held by Administrative Vice Minister of Justice Yen Da-ho and Administrative Vice Minister of the Interior Chien Tai-lang. Ministry of Finance Deputy Director General of Customs Chien Liang-chi will serve as Executive Secretary. Each unit is asked to designate a person to serve as a contact window for coordination and liaison.

III. Execution:

1. The Task Force will convene meetings from time to time as necessary for active coordination and liaison of prevention and enforcement operations of the individual ministries to eradicate pirated optical disk exports.
2. Customs will carry out stringent prevention and enforcement measures at open ports (including harbor areas, anchorages, and neighboring waters).
3. Enforcement operations:

(1) Enforcement measures:

(i) Strengthen the sharing of pirated optical disk intelligence and information with the customs services of other countries and the mutual reporting of such intelligence and information among domestic units, and build a complete intelligence and information network:

(a) At present, ROC Customs has established mechanisms for intelligence and information exchange with the customs authorities of countries including the United States, Japan, South Korea, and Belgium. Those Customs, upon discovering pirated optical disks originating from Taiwan, can utilize these mechanisms to notify ROC Customs, which will inspect and investigate the sources of such goods and the criminal groups behind them.

(b) Customs and all relevant units in Taiwan will set up contact windows to strengthen the notification of intelligence and information on pirated optical disk exports.

(ii) Intensify examinations of high-risk goods and businesses:

(a) Intensify examinations by employing risk management concepts to increase examination ratios on the basis of historical record data or cross analysis of various intelligence and information indicating tariff classifications (or product names) likely to be used in false declarations or businesses likely to export pirated optical disks. (Carry out 100 percent examinations of all highest-risk businesses; double the examination ratio for exported optical disks; raise examination ratios commensurately with the degree of risk for tariff classifications or businesses where a possibility of false declarations is indicated.)

(b) Utilize various computer programs to analyze risk associated with export goods and exporters and adopt measures to intercept high-risk good.

(iii) Intensify auditing of warehousing data and patrolling warehouses:

All ROC Customs Service field offices shall implement and observe the “Points for Observance and Execution in Patrolling Warehouses and Cargo Terminals”, and shall realistically track and review such operations. Attention shall be paid to suspicious irregularities in packaging, marks, air labels, and so forth and judgments made as to whether cartons should be opened for inspection.

(iv) Intensify sampling audits of bypass containers (goods):

Where suspicious irregularities are found in a post-clearance auditing of a bypass export declaration form, further analysis shall be carried out and examinations of subsequent exports by the company shall be intensified.

(v) Intensify case selection for post-clearance auditing and carry out compliance

assessment of specific companies:

Implement case selection based on analysis of businesses and tariffs and carry out compliance assessment based on information on specific businesses provided by the US authorities.

- (vi) The mobile inspection brigades, inspection units, and warehousing units of individual ROC Customs Service field offices shall deploy personnel responsible for strengthening enforcement operations for optical disk exports.
- (2) When, in the course of executing the above enforcement operations or during routine inspections, Customs discovers any suspected pirated optical disks, it shall promptly notify the rights holder or related rights holder groups by telephone or fax to proceed to Customs to assist with verification within a certain time from receiving notification (air exports: 4 hours; marine exports: 1 working day). Customs shall also notify the exporter of the goods by telephone or fax to produce authorization materials.
- (3) If the goods are determined by the rights holder or related rights holder groups to be suspected pirated optical disk exports, and the exporter is unable to produce authorization materials or other documents evidencing that the goods are not counterfeit, Customs shall notify the National Police Administration, Aviation Police Bureau, various harbor police bureaus, or Intellectual Property Rights Police Force to dispatch a squadron stationed in the local area to duly seize the goods.
- (4) If the goods are determined by the rights holder or related rights holder groups to be suspected pirated optical disk exports, and the exporter produces authorization materials or other documents evidencing that the goods are not counterfeit, Customs shall notify the rights holder or related rights holder groups to apply to Customs within three working days for suspension of release of the goods in accordance with Article 90bis of the Copyright Law and applicable provisions of the Implementation Regulations for Suspension of Release of Goods Infringing on Copyrights or Patent Rights by Customs Authorities. Upon failure to do so by the deadline, and absent any other violation of customs clearance regulations, Customs will release the goods after taking representative samples, and will report the case via letter to the competent authority and the locally stationed squadron of the Intellectual Property Rights Police Force for reference and handling.
- (5) If the rights holder or related rights holder groups determine that the goods are not pirated goods, or fail to proceed to Customs to assist in verification by the deadline of which they are notified, and absent any other violation of customs clearance regulations, Customs will release the goods.

IV. Other supporting measures:

1. Related units are requested to strengthen intelligence collection, undercover deployment, and intelligence utilization related to pirated optical disk exports.
 - (1) Units under the National Police Administration, Ministry of the Interior, and the Ministry of Justice Investigation Bureau are requested to intensify the collection of intelligence and information on the manufacture, sale, and storage of pirated optical disks in their precincts and beats.
 - (2) The Ministry of Economic Affairs' JODE Task Force is requested to provide materials on Class C businesses to the Directorate General of Customs, Ministry of Finance, to facilitate export controls in accordance with the decision under point three of the Report on the Third Coordination Meeting for the Intellectual Property Rights Protection Action Year Plan of 23 September 2002. When the JODE Task Force uncovers pirated optical disk factories, it is also to provide relevant materials for reference by the Directorate General of Customs.
 - (3) When it receives confidential reports related to domestic pirated optical disk enforcement, Customs shall dispatch such reports to the Intellectual Property Rights Police Force and the JODE Task Force of the Ministry of Economic Affairs, and shall send a copy to the Anti-Counterfeiting Committee of the Ministry of Economic Affairs, to facilitate enforcement.
 - (4) With respect to intelligence collection, undercover deployment, and intelligence utilization related to pirated optical disk exports, the Directorate General of Customs, National Police Administration, and Ministry of Justice Investigation Bureau are requested individually to fully capitalize on the functions of existing systems. Where specific intelligence has a bearing on the powers and duties of other units, it becomes imperative to take the initiative in liaising with the relevant units.
 - (5) To avoid overlapping of powers and functions in enforcement work in serious cases of pirated optical disks both inland and at borders, individual units may request the chief prosecutor of the public prosecutors' office attached to the jurisdictional district court to dispatch a prosecutor to coordinate work on the case.
 - (6) Reports that are urgent or that demand timely handling may be made by telephone or fax. Relevant intelligence and information shall be mutually circulated in reports between the contact windows designated by the Task Force.
2. Any unit uncovering a case of pirated optical disks in bulk quantity shall carry out follow-up investigation into the source of the goods and criminal groups behind them, and shall analyze the case and use it as a training aid for purposes of review and improvements, so as to uplift the performance efficiency.

3. The Anti-Counterfeiting Committee, Ministry of Economic Affairs, is requested to coordinate with rights holders or rights holder groups and assist enforcement units in verifying suspected pirated optical disks, and to compile logs of materials such as the characteristics of, and color illustrations of, pirated optical disks for reference by enforcement units. When carrying out training for enforcement personnel, all units may arrange curricula related to the appraisal of pirated optical disks and request the Anti-Counterfeiting Committee of the Ministry of Economic Affairs to coordinate with rights holders or rights holder groups to dispatch experts to provide instruction and guidance, in order to enhance the effectiveness of enforcement operations.
4. To encourage the pursuance of best results in enforcement operations, Customs officers seizing pirated optical disks shall be entitled to a preferred-level reward based on the value of the genuine goods.