

PO-CH/NL/OS16

PART A

Part A

RESTRICTED

(Circulate under cover and
notify REGISTRY of movement)

begins : 2/11/88
Ends : 1/12/88

**THIS FOLDER HAS BEEN
REGISTERED ON THE
REGISTRY SYSTEM**

PO CH | NL | 0516.
PT.A.

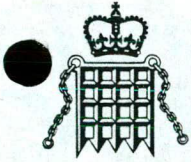
Chancellor's (Lawson) Papers:
Counterfeit Goods : Review of First
Six Months Operation of European
Community Regulations.

DD's: 25 Years

[Signature]

1/3/96.

PO CH | NL | 0516.
PT.A.



HM CUSTOMS AND EXCISE
CUSTOMS DIRECTORATE
DORSET HOUSE, STAMFORD STREET
LONDON SE1 9PS
01-928 0533
GTN 2523

FROM : DENNIS A WALTON
DATE : 2 NOVEMBER 1988

cc PS/Chancellor
Mr Gilhooly
Mr Waller
Mr Michie
Mr Call

ECONOMIC SECRETARY

COUNTERFEIT GOODS : REVIEW OF FIRST SIX MONTHS'

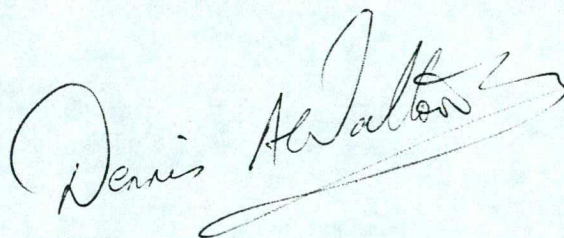
OPERATION OF EC REGULATIONS

On 30 November last year Peter Wilmott sent you a note about the implementation of the EC Regulation. The purpose of this note is to report on the first six month's operation. The major feature of the first six months has been the almost total failure by the trade to make use of the scheme. We have been unable to find a satisfactory explanation for this. The limitation in the scope of the EC Regulation is probably a contributory factor. But trade representatives have voiced the opinion at different times that the level of the fee and the amount of information required by Customs present barriers to potential users of the scheme. In practice the latter proved to be a misunderstanding about the minimum requirements to support an application. Very little is required. As to the fee, when challenged, individual traders said that £500 plus VAT was not a deterrent. It was negligible in the context of the value of imported counterfeit goods. The UK experience is reflected in France and Germany, the only two other countries which have a fully operational scheme. France has received 10, Germany just 2 and the UK 3 applications. Two of the 3 applications we have received are provisional and have not yet been activated. The third resulted in a successful seizure of cloth bearing a counterfeit trade mark.

Internal circulation : CPS, Mr Jefferson Smith, Mr P V H Smith, Mr Nash, Mr Eland,
Mr Fisher

Unless the trade shows more interest in the second half of the year, we shall need to reconsider our resource requirements, bearing in mind that 20 posts and related financial provision have been transferred to us by the Department of Trade and Industry for exclusive deployment to the scheme.

I attach for your information a note giving a fuller account of our review. I attach for your approval a copy of a draft press release which might generate interest in this area and stimulate the trade into action. A few successful seizures of counterfeit goods would be the best advertisement for the scheme but unless the trade submits applications we can do little.

A handwritten signature in black ink, reading "Dennis A. Walton". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

DENNIS A WALTON

COUNTERFEIT GOODS - REVIEW OF THE UK SCHEME
INTRODUCED UNDER EC REGULATION 3842/86

1. The review considered the following aspects:
 - a. nature of the UK scheme;
 - b. allocation of resources;
 - c. publicity given to the scheme;
 - d. changes to the scheme since its introduction;
 - e. trade response to the scheme;
 - f. experience of the scheme in the UK;
 - g. experience of other Member States.

2. Nature of the UK Scheme

2.1 The UK scheme was explained in an attachment to Peter Wilmott's note of 30 November 1987. However, briefly under the scheme the owner or registered user of a trade mark may apply to Customs for the interception of counterfeit goods bearing their trade mark if the goods are entered for free circulation. The application has to be supported by evidence that the trade mark is registered and the applicant is required to indemnify Customs against any costs or liability they may incur as a result of detaining goods in pursuance of the application.

2.2 Although applicants are encouraged to give as much information as possible about anticipated imports only a limited amount of information is essential. This consists of a description of the

goods, their Customs commodity code and the country or geographical area from which they are believed to originate. A fee of £500 + VAT is payable for an application which is valid for 3 months after it is accepted.

2.4 On accepting an application Customs undertake a very thorough monitoring procedure. Their computers are programmed to pick out all import entries for the type of goods covered by the application and consigned from the relevant countries. These are subjected to a documentary check to identify potential consignments of counterfeit goods which are then selected for physical examination. If any suspect goods are found and confirmed by the applicant to be counterfeit they are seized and destroyed after the legal period for appeal (one month) has expired - unless the seizure is contested by the importer.

Allocation of Resources

3.1 It was agreed that to enable 175 live notifications to be dealt with at any one time, Customs would have to deploy a total of 40 staff. 20 of these with related funding were provided by DTI under a PES transfer arrangement. The other 20 were to be made available from Customs' existing PES provision.

4. Publicity given to the Scheme

4.1 Considerable publicity was given as part of the 1987 programme of implementation including presentations at various conferences and seminars and the publication of articles or notices in "British Business" and specialist trade journals. Regular meetings were held with the Anti-Counterfeiting Group (ACG).

4.2 In December 1987 a Customs notice giving details of the scheme was issued to approximately 150 companies. A large number of application forms was also distributed.

5. Changes to the Scheme since its introduction

5.1 As the EC Regulation appeared to cover only goods entered for free circulation, goods below the monetary threshold for entry (ie £450 for freight and £1,300 for postal imports) were excluded from the scheme at the outset. The EC Commission expressed disapproval however, when this came to their notice. The Anti Counterfeiting Group (ACG) was unhappy at the limitation too. In the face of this pressure the scheme was extended to apply to any consignments of a commercial nature. Originally it was thought that this extension would require amendment of the UK Statutory Instruments but legal advice has now been obtained to the effect that existing provisions can accommodate the change.

6. Trade response to the Scheme

6.1 Trade mark owners have been very slow to take advantage of the scheme. Although industry had pressed for new legislation in this area and has generally welcomed its introduction this has not been reflected in the number of applications received which so far has amounted to just 3 (with two of these on a provisional basis).

6.2 The most significant reaction to the scheme came from the ACG. ACG forms the principal UK lobby in this field. Initially they gave the scheme a mixed reception. Whilst keenly supporting the Community initiative in this area, they were dissatisfied with limitations in the scope of the Regulation and with certain aspects of implementation in the UK.

6.3 As regards the Regulation itself, ACG appeared not to have appreciated initially that the Regulation applied only to goods entered for free circulation and that those entered to other Customs regimes such as Customs Warehousing, or transhipment were outside its scope. On learning of this, they expressed concern that these regimes could be used as a means of diverting counter-

feit goods to home use as they are subject to less rigorous control than goods entered for free circulation. Despite assurances from Customs that counterfeiters would not be aware of applications from trade mark owners and would therefore be caught at least once and that we would monitor entries to those other regimes that has remained a source of concern to ACG.

6.4 As for the UK scheme, ACG have objected chiefly to two aspects. Originally they felt that the fee was too high. They took the view that annual protection at £2000 was not good value for money. Their second concern was disappointment that there was no two-tier application system with the basic tier involving no Customs monitoring of entries but providing power to seize any counterfeit goods covered by an application if entered for free circulation.

6.5 Meetings with ACG and exchanges of correspondence have ensured a better understanding of the service available under the scheme. This has gone a long way to convincing ACG that the fee reasonably reflects the considerable work involved. Discussions with individual members of ACG have repeatedly elicited the view that the fee is not a barrier to making an application under the scheme. ACG finally (in March of this year) recommended the scheme to its members - not with any noticeable effect so far.

6.6 There has been some press reaction to the scheme although the little coverage it received was largely negative and reports and articles tended to attack the fee or state that more detail than is in fact the case was required to make an application.

6.7 As part of the review, 150 questionnaires were sent to various manufacturing companies and trade mark agents. In the main these were companies and agents who had in 1987 requested advance copies of the Public Notice describing the scheme. Respondents were asked to comment on various aspects such as the application

procedure, information requirements and the fee payable. They were also asked why that company had not applied to use the scheme if they were affected by imports of counterfeit goods from outside the EC and whether they intended to use the scheme in future.

6.8 Only 25 replies were received but a majority said that they were not affected by imports of counterfeit goods bearing their trade mark or that their clients were not affected. Only 4 companies said they were definitely affected, but currently had no specific information about counterfeit importations.

6.9 Most respondents expressed views on aspects of the scheme. The overall view was that the application procedure was satisfactory but some expressed concern about the indemnity (due to its unlimited liability) and a few thought the fee was too high or that the application should cover a longer period. A number of companies expressed concern about the potential costs involved such as the applicant having to pay for the cost of storage and destruction of goods detained. The majority of respondents said they would use the scheme if the need arose. Only one said he would definitely not use it.

7. Experience of the Scheme in the UK

7.1 With just one live and two provisional applications received, practical experience of the scheme has been severely limited. However, the one live application did produce encouraging results. A valuable consignment of cloth bearing a counterfeit trade mark was intercepted. But as the goods were intercepted before an entry was lodged the monitoring procedure was not tested; we have since put a dummy application through the computer system which has proved capable of running the checks required. However, it has not as yet identified any suspect consignments.

8. Experience of other Member States

8.1 Although the Regulation provides for flows of information on how it is being implemented in the various Member States, to date details have been fairly sparse. The majority have clearly been slow in introducing the measures and some have not done so at all. Apart from the UK only France and Germany appear to have a fully operational scheme.

8.2 As a result of this there is very little European experience available for comparison. However, the news from France and Germany suggests a similar experience to that in the UK. The latest figure for applications show that France has received 10 and Germany 2. Results so far have been limited to the seizure of small consignments of counterfeit watches and "designer label" garments imported by passengers.

8.3 The poor response to the French and German schemes and the results achieved are particularly significant. As neither country charges for a fee for applications it lends support to the view that the size of the UK fee is not a critical factor in influencing decisions about applying. The type and quality of goods seized are also significant as they conform to the UK pattern. So far neither France nor Germany has intercepted large scale consignments.

9. Conclusions and Recommendations

9.1 The evidence of the first six months' operation of the scheme points overwhelmingly to the conclusion that the trade does not see the scheme as a tool to be used frequently in combatting counterfeiting.

9.2 It is difficult to attribute reasons for the trade's lack of reaction to the scheme. Clearly the ACG would prefer the scope to be extended to cover goods entered to regimes other than free circulation. The EC Regulation does not provide for this, but in any case we have no evidence that such an extension would generate a rash of applications.

9.3 The fee was quoted, particularly in the very early days, as a barrier to applications. When questioned about this, individual ACG members have denied it. Moreover, French and German take up on their schemes, where no fee is charged, has been very similar to that in the UK.

9.4 There was some misunderstanding initially about the amount of information necessary to initiate an application. The fact that very little is essential has been made clear to the ACG but this is an area where more publicity could produce results.

9.5 Reaction to the questionnaire sent out to seek trade views on the scheme and comments made by ACG indicate that the unlimited liability to the indemnification is a cause of some concern. This is an area which might benefit from further examination if active encouragement is to be given for applications to be made.

9.6 The replies received to the questionnaire suggest that there are far less imported counterfeit goods than is claimed and that generally companies are not unduly concerned about it.

9.7 The overall conclusion to be drawn at this stage is that although there are no fundamental defects in the scheme our evidence points strongly towards only a very limited use being made of it. The question arises - what to do about it?

9.8 Early press publicity and trade perception of the scheme was not good. Although steps have been taken to recover that lost ground with the trade there is little evidence of great interest in the scheme. Nonetheless, it has been in existence for a few months only. It would be premature to take the line that Customs had done all that it could to promote interest in the scheme and that the trade has no intention of making greater use of it.

It is recommended that

a. a press notice be issued as soon as possible with the aim of generating interest and encouraging applications; and

b. the situation be further reviewed after 12 months' operation when it may be possible to make a more reliable estimate of the long term resource requirements of the scheme.

D R A F T P R E S S R E L E A S E

Action Against Imports of Counterfeit Goods

As a result of a scheme introduced on 1 January this year under European Community legislation, trade mark owners in the UK can ask Customs to look out for and intercept counterfeit goods bearing their trade mark imported from outside the Community. Once intercepted and confirmed as counterfeit the goods can be seized and destroyed.

How the Scheme works

The proprietor or registered user of a trade mark wishing to take advantage of the scheme should apply to Customs using an application form obtainable from the address shown below.

Applicants are not expected to know when or where the counterfeit goods will be imported and only the following information about the goods is essential before Customs can take action:

- a. a description of the goods concerned;
- b. their tariff classification for customs purposes; and
- c. country or geographical area from which the counterfeit goods are believed to originate.

Other details, such as the name of the importer would help but are not obligatory.

After accepting an application Customs use computer assisted monitoring to check all import entries for the type of goods covered by the application. Suspect consignments identified by this process are then physically examined. If the goods match

those described on the trade mark owner's application, Customs have the power to seize them.

Customs charge a fee of £500 (plus VAT) for the service and, once accepted, an application is valid for 3 months. (An applicant may lodge a "provisional" application without payment of a fee. Customs will vet such applications but will not start the monitoring procedure until asked to do so by the applicant, at which point the fee will be payable.)

Background Note

The Regulation is a Community measure and applies to goods entered for free circulation in the Community rather than to all imports into a Member State. It thus does not cover intra-Community trade. Other goods not covered include those entered for other Customs regimes, such as Customs warehousing or inward processing.

The fee is necessary to cover some of the cost of what has been designed to be a very effective service where Customs take active measures to intercept counterfeit goods without requiring detailed information from applicants.

The scheme has not been used to the extent that was anticipated and it is hoped that this publicity will encourage the trade to make application. Only then can Customs initiate the action that will help tackle the problem of counterfeiting at the point of importation.

Further information and applications

For further information, including application forms and a notice (No 34A) giving full details of the scheme contact HM Customs and Excise, CDB3b, Room 123, Dorset House, Stamford Street, London SE-1 9PS (Phone 01-928 0533, ext: 2454, 2101 or 2026).



FROM: G R WESTHEAD
DATE: 7 November 1988

A large, stylized handwritten signature in blue ink, likely belonging to G R Westhead.

MR WALTON - C&E

cc: PS/Chancellor
Mr Gilhooly
Mr Waller
Mr Michie
Mr Call

PS/C&E
Mr Jefferson-Smith - C&E
Mr Nash - C&E

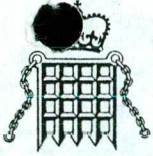
COUNTERFEIT GOODS : REVIEW OF FIRST SIX MONTH'S OPERATION OF EC REGULATIONS

The Economic Secretary has seen and was very grateful for your minute of 2 November and for the review you have carried out into the counterfeit goods scheme. As I mentioned on the telephone, the Economic Secretary does not, however, see any point in issuing a press release to drum up interest in this scheme. He thinks it more likely to stir up ridicule rather than extra business.

2. The Economic Secretary also thinks that since demand for the scheme is clearly minimal we ought to withdraw our resources and redeploy them elsewhere.

A handwritten signature in blue ink that reads "Guy Westhead".

GUY WESTHEAD
ASSISTANT PRIVATE SECRETARY



HM CUSTOMS AND EXCISE
CUSTOMS DIRECTORATE
DORSET HOUSE, STAMFORD STREET
LONDON SE1 9PS
01-928 0533
GTN 2523

FROM : D A WALTON
CD DIVISION B
DATE : 18 NOVEMBER 1988

APS/ECONOMIC SECRETARY

COUNTERFEIT GOODS : REVIEW OF FIRST SIX MONTHS' OPERATION OF EC
REGULATION

Thank you for your note of 7 November.

Although not able to see any reason why its issue should stir up ridicule we accept the Economic Secretary's view that a press release would not be appropriate at present.

However, there have been significant developments since the end of the period under report in my note of 2 November. We have received applications from the Rolex Watch Co Ltd and Lacoste. They are among the top few companies most frequently the target of counterfeiters. The Rolex application has been in operation for just over seven weeks and we have so far seized 575 watches. The Lacoste application has been running for four weeks and we have seized nearly 150 T-shirts. News of these developments could stimulate further trade interest.

We consider that the receipt of these applications and the results lend support to the recommendation in my paper of 2 November that the resource requirements of the scheme be reviewed after 12 months' operation - at the end of 1988. Although we can hardly expect these two applications to lead to the level of work estimated at this time last year, it may well be that we shall have more to do than seemed likely after the first 6 months' operations. We hope therefore that the Economic Secretary will agree that the decision to withdraw resources can be re-examined in the New Year. Of course, the slack generated by the shortfall in applications under this Regulation has been taken up by deployment on other duties. Counterfeit goods work simply forms a small part of the work of a large number of staff who are engaged on general customs or preventive duties. Any spare capacity is devoted to the enforcement of other import regimes. There is no question of staff doing nothing while awaiting work on counterfeit goods.

DENNIS A WALTON

Circulation :

PS/Chancellor
Mr Gilhooly
Mr Waller
Mr Michie
Mr Call

CPS
Mr Jefferson Smith
Mr P V H Smith
Mr Nash
Mr Eland
Mr Hammond
Mr Fisher

→ Jonathan

FROM: MARK CALL
DATE: 23 NOVEMBER 1988

APS/ECONOMIC SECRETARY

cc PS/Chancellor
Mr Gilhooly
Mr Waller
Mr Michie

e 12/2

pp. 12.

COUNTERFEIT GOODS

Mr Walton's minute to you of 18 November highlights an area where British Customs are perceived to be over-zealous.

2. While it is certainly true that Rolex watches and Lacoste T-shirts are subject to extensive counterfeiting, I'm not sure that renewed zeal on the part of Customs is the way to attack the problem. By no means all of those wearing the offending items are aware of the fact. Furthermore, seizure of watches is sometimes justified simply because the wearer does not have the receipt. (I heard of a case only last week.) Customs' seizure of T-shirts could make the case of Mr Reed's mother at Edinburgh Airport pale into insignificance.

3. Surely the companies affected by counterfeiting would be best advised to direct their efforts to the source of the fakes?

MC

MARK CALL

Agree with
SOL to BSA &
Mr Call on
this matter.



FROM: J M G TAYLOR
DATE: 1 December 1988

APS/ECONOMIC SECRETARY

cc Mr Gilhooly
Mr Waller
Mr Michie
Mr Call

A large, stylized handwritten signature in black ink, likely belonging to J M G Taylor.

COUNTERFEIT GOODS

The Chancellor has seen the Economic Secretary's note of 7 November, Mr Walton's (C&E) note of 18 November, and Mr Call's note of 23 November.

2. He has commented that he agrees with both the Economic Secretary and Mr Call on this matter.

A small, handwritten signature or set of initials in black ink, possibly "JMGT".

J M G TAYLOR