



CUSTOMS SUBMISSION: ADVISORY COUNCIL ON INTELLECTUAL PROPERTY REVIEW OF ENFORCEMENT OF PLANT BREEDER'S RIGHTS

Options Paper

Thank you for providing Customs with the opportunity to make comments on the Options Paper released as part of the ACIP Review of Enforcement of Plant Breeder's Rights.

Customs undertakes a wide range of activities at the border. Whilst our primary role is community protection, we must also balance that role against meeting the community's reasonable expectations about the ease of travel and doing business. Facilitating the movement of legitimate travellers and goods is essential.

All movements across the Australian border are screened by Customs using a range of intelligence, targeting, and profiling techniques. Cargo examination is undertaken on a priority basis in accordance with the risk to the community. Consequently, illicit drugs, weapons and terrorist related matters will always be an important focus for Customs resources. Each year Customs intercepts a large number of prohibited and restricted goods, including goods suspected of infringing intellectual property rights.

Any proposal promoting the enforcement of plant breeder's rights at the border would present some unique challenges in the Customs environment. The identification of plant material and its genetic makeup requires a substantial level of expertise, which would be difficult to establish effectively with Customs staff. Due to the perishable nature of live plant material, specialist handling and packaging would be required for transportation and storage. This limits opportunities to undertake examination of goods in real time.

Options put forward

The Options Paper puts forward three options with respect to the enforcement of PBR at the Australian border. These are:

- Option 40: No Change;
- Option 41: Introduce PBR seizure powers for Customs based on the notice system used for trade marks; and
- Option 42: Introduce PBR seizure and destruction powers for Customs based on the European system.

Customs response

Australian Customs supports Option 40, where no change would be made to Customs existing powers. For the reasons put forward in our previous submission it would be impractical for Customs to introduce a notice system similar to that in place for trade marks for PBR.

Customs is of the opinion that Australia already has an effective system where PBR owners can protect their rights from the importation and exportation of goods which infringe their rights.

As part of an infringement action, the owner of a PBR can seek an injunction from the court requiring Customs to suspend the release of a consignment containing suspected infringing goods at both importation and exportation. Customs would detain any consignments in line with the terms of an order of the court.

As submissions received by ACIP have indicated that PBR owners could provide Customs with the names of businesses or individuals importing infringing material, this information could instead be provided to the court when an owner was seeking an injunction directed at Customs.