

**INTELLECTUAL PROPERTY (BORDER ENFORCEMENT) BILL**

**SECOND READING**

**9 JULY 2018**

**SENIOR MINISTER OF STATE FOR LAW MR EDWIN TONG SC**

Mr Speaker,

1. I beg to move, “That the Bill be now read a second time.”

**Introduction**

2. Under our current Intellectual Property (“**IP**”) border enforcement regime, Singapore Customs (“**Customs**”) can seize or detain goods that are suspected to have infringed trade marks or copyright at the borders in 2 different ways:

a. Upon IP right holders’ request (that is, right holder initiated actions),  
for imports only; or

b. By *ex officio* action, (that is, Customs acting on their own volition), for  
imports, exports and goods in transit with local consignees.

3. Following the conclusion of the European Union-Singapore Free Trade Agreement (“**EUSFTA**”) in 2014, Singapore agreed to add new border enforcement measures to deal with goods infringing various IP rights. As such, amendments are required for our Copyright Act, Trade Marks Act, Registered

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Designs Act and Geographical Indications Act (collectively known as the “various IP Acts”). The border enforcement measures for geographical indications have been introduced in the new Geographical Indications Act (“GI Act”), that was passed in April 2014, but not brought into force yet.

### **Key features of the Bill**

4. This Bill now seeks to amend the Copyright Act, Trade Marks Act and Registered Designs Act to implement our EUSFTA obligations, as follows :

- a) Enhancing existing border enforcement measures in the Copyright Act and Trade Marks Act; and
- b) Establishing a new border enforcement regime in the Registered Designs Act.

5. Next, the Bill will provide new powers for Customs to obtain and provide information relating to the goods they seized or detained to facilitate the taking of infringement action.

6. In addition, the Bill will standardise and clarify the terms and provisions relating to border enforcement across the various IP Acts.

7. I will now take the House through the main features of the Bill.

### **New EUSFTA-related border enforcement measures**

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8. First, the Bill will implement our EUSFTA obligations to enhance existing border enforcement measures in the Copyright Act and Trade Marks Act, and establish a border enforcement regime in the Registered Designs Act.

9. Currently, right holder initiated actions under the Copyright Act and Trade Marks Act are limited to only suspected infringing goods which are to be *imported* into Singapore. No such equivalent power is found in the Registered Designs Act currently.

10. The amendments in the Bill will now allow Customs to seize, on right holders' request:

- a. Goods suspected of infringing copyright or trade marks that are to be exported, and
- b. Goods suspected of infringing registered designs that are imported or are to be exported.

11. These measures are set out in Part 1 Division 2, Part 3, and Part 4 Division 2 of the Bill.

12. An owner of a valid copyright or registered trade mark in Singapore, or a licensee with the power to give a notice of seizure, will be able to avail themselves of these new measures. The same applies to an owner or an exclusive licensee of a registered design.

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13. Similar safeguards under the existing border enforcement regime will also apply to ensure that these new measures are not abused. For example, right holders must provide a security deposit if they would like Customs to seize certain suspected infringing goods. Also, a person aggrieved by the seizure can apply to the Court for compensation, if the right holder fails to take infringement action after filing a request for seizure.

### **New powers for Customs to obtain and provide information**

14. The second set of new features are powers for Customs to obtain and provide right holders with information relating to the infringing goods seized or detained by Customs. These powers will be provided for in the various IP Acts, and are set out in Clauses 4, 7, 25, 39, 47, 53, 57, 60 and 78 of the Bill. They are intended to complement Customs' border enforcement duty, and facilitate right holders in instituting IP infringement proceedings.

15. The power to provide information to right holders will be a narrow exception to Customs' obligations to keep any information obtained under the Customs Act and Regulation of Imports and Exports Act confidential.

16. The information to be provided will be limited to the names and contact details of any person connected with the import or export of the seized or detained goods that is necessary for instituting IP infringement proceedings.

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17. In order to guard against right holders abusing this power to “fish” for information, the information sought may be provided only after:

- a. Customs have seized the infringing goods, and
- b. The IP right holders have provided Customs with a security deposit and supporting documents evidencing their IP rights.

### **Standardising and clarifying terms and provisions**

18. The third feature of the Bill involves standardising and clarifying the terms and provisions relating to border enforcement across the various IP Acts. For example, Clauses 25, 47 and 78 of the Bill will clarify the processes for *ex officio* seizures in the Copyright Act, the Geographical Indications Act and the Trade Marks Act. These changes will streamline Customs’ border enforcement operations and procedures.

### **Implementation timeline**

19. The changes sought under the Bill, together with the enhanced border enforcement measures under the GI Act passed in April 2014, will be implemented in 3 stages to meet Customs’ operational needs, provide businesses sufficient time to adapt and correspond with our obligations under the EUSFTA, which is in the process of being ratified. Sufficient notice will be provided before the commencement of the relevant provisions.

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## **Conclusion**

20. In conclusion, these amendments will ensure Singapore's obligations under the EUSFTA are implemented, and also cement Singapore's reputation as a jurisdiction that respects IP.

21. Mr Speaker, I beg to move.

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