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One of the main problems in enforcing IP rights against transit merchandise in Mexican Customs has been the interpretation of the concept of “importation” that some local officers apply when dealing with infringement proceedings, specifically with border measures.

Mexico’s Industrial Property Law (IPL) does not provide for legal actions against those exporting or returning infringing merchandise but only against those *importing it*. In this regard and according to some Customs officers, the importation is necessarily linked to the filing of the pertinent importation papers. Therefore, Customs sometimes refused to seize infringing merchandise in transit by arguing that it has not been formally imported into Mexico since no importation papers have been filed.

This absurd interpretation by Customs could allow infringers to know the existence of possible legal actions against them and give them the opportunity to simply return their infringing merchandise with no legal consequence. At worst, this interpretation, which is allegedly supported in the Customs Law, could imply that the transit of illegal merchandise in Mexico is allowed. However, it is important to point out that the Customs Law is not supplemental to our IPL and thus that the whole concept of importation contained in the Customs Law does not apply to IP matters. In addition and pursuant to some legal precedents from Mexican courts, the term “importation” should be understood as the introduction of merchandise into Mexican territory. Consequently, it is clear that transit merchandise infringing IP rights could and should be legally stopped by the Customs.

Unfortunately and since we are dealing with a recent criteria adopted by some local Customs to avoid problems and/or any kind of responsibility, we are afraid that it will take time before practitioners can create awareness among Mexican authorities about the enforceability of IP rights on transit merchandise. Needless to say, the Mexican Institute of Industrial Property should be more willing to closely cooperate with Customs and together exert efforts to prevent any violation of IP rights in Mexico.