

# Seizure of counterfeit ball - bearings in transit to Paraguay

## Backgrounds

On december 2018, National Customs Office, performed the first seizure in Uruguay of an in transit container of counterfeited ball-bearings of different worldwide known trademarks.

The products came from China and its final destination was a company located in Asunción, Paraguay. The seized ball-bearings have a high market value due to its amount and as well because of their use, being used for high cost machinery.

Trademarks	<b>SKF, TIMKEN, SCHAEFFLER, FAG, INA.</b>
Competent Authorities	Drug Prosecutor of 1st Term.

## Procedure

National Customs Office, received an alert from Brazil related to a container with products in alleged trademark infringement, ordering consequently to stop the shipment in order to proceed to its inspection.

Proceeding with the inspection and checking the documentation, it was noted the existance of ball-bearings identified with the trademarks FAG, INA and TIMKEN, being notified the trademark representatives.

It was found that the products were counterfeited, being consequently submitted the corresponding criminal complaint before the prosecutor from narcotics of 1°term (with jurisdiction regarding Intellectual Property matters) so as to proceed with the seizure and initiate the criminal



procedure in order to identify those responsible and order the destruction of the seized goods.

Currently the evidence is being gathered and it will be ordered the performance of an expert's examination by technical police in order to objectively confirm the counterfeiting of the products.

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## Counterfeiting and the impact on the consumers security

It constitutes a very significant case, particularly due to the type of seized products it entails; being a ball-bearing a mechanic spare part used for the operation and movement of vehicles and machinery in general.

Original products comply with certain quality standards, certifications, are subject to tests, have the manufacturer's guarantee and a brand that supports/ backs the consumer in the event of any contingency.

Quite the opposite is the situation regarding the counterfeited products, thus, lets consider the security issues and mechanical failures that may be caused by the use of these ball-bearings and that society in general may be affected.

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## Final provision regarding the counterfeited ball- bearings

Budget Act N°19355 in its article 235 in substitution of article 84 of the Trademark Law N°17011, establishes that the seized merchandise shall be confiscated and destroyed unless due to its nature may be donated to charities.

In the present case, referring to seized counterfeited products that may affect vehicles or machinery in general security, must be destroyed according to current environmental regulations.

Nevertheless, these products destruction process produces a new challenge, due to its size, amount and particularly regarding the material that they are made of, it may not be possible to destroy them the same way its usually done with most of the other products, having to be fused in order to create new raw material.



### Budget Act

#### N°19.355 - Article 235

Substitutes article 84 of Law N° 17.011, of September 25 of 1998. The referred products as well as the means used for the implementation will be destroyed or disabled. The seized infringing products will be confiscated and destroyed, unless because of their nature they may be donated to public or private charitable institutions. Once the apocryphal quality of the merchandise is demonstrated by the corresponding technical examinations, they will be destroyed bearing the costs the claimants, or donated to public or private charitable institutions.

## Conclusions

This seizure had a great significance regarding the type of the seized product, since it is not as frequently found as toys, footwear or clothing.

On the other hand, the finding of this type of counterfeit product lead us to consider the importance of legally acquiring this products from the authorised sales points, thereby procuring a product with the corresponding quality control and a guarantee that endorses the consumer regarding any type of malfunction or flaw that presents.

It is key to be aware that a counterfeited product of this type may harm our physical integrity if we suffer an accident due to a malfunction, and that there is no company that will endorse us consumers if we purchase this kind of counterfeited goods in the market.



## In Transit Regimes

- ▶ In transit merchandise is defined as the merchandise that circulates across a country's territory, but whose destination is actually a different country.
- ▶ The in transit counterfeit merchandise only stands out from the rest of the counterfeited goods on the basis that it is not taxed, thus, it must be seized with no exceptions.
- ▶ The transit regime does not exclude the enforcement of the local trademark law. The goods are on circulation or being stored in a country and the fact that there are non dutiable does not preclude its submission to the trademark law.
- ▶ If a Customs authority inspects a container that includes counterfeit goods, it shall be seized and its circulation banned. No matter the source of the goods, its destination, if its origin does not relate to the capturing customs authority domestic market. It is a container with infringing merchandise and shall not remain in circulation.

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