

LAW OF UKRAINE

On Amendment of the Customs Code of Ukraine (in respect of Protection of Intellectual Property Rights during the Movement of Goods through the Customs Border of Ukraine)

The Supreme Rada of Ukraine hereby **r e s o l v e s**:

I. To amend the Customs Code of Ukraine (Vidomosti Verkhovnoji Rady Ukrajiny [*Bulletin of the Supreme Rada of Ukraine*], 2002, No. 38 – 39, page 288; 2003, No. 6, page 51; 2004, No. 19, page 276; 2005, No. 18 – 19, and page 267) as follows:

1. Clause 10 in Article 1 shall be restated as follows:

“10) **counterfeit goods** shall mean such goods and/or packaging containing such goods, labels, tags, tabs, strips, brochures, use manuals, warrantee documents, any packaging materials or other items connected with goods, even if such items are presented separately from the goods, onto which goods is affixed such mark as is identical or similar to such extent that it may be confused with a trademark or a geographic indication, the rights to which trademark or geographic indication are protected in Ukraine for the same goods or related goods, without the consent of the holder of rights to the trademark, or the person who holds rights to use the geographic indication, or onto which goods is affixed such mark as is identical or similar to such extent that it may be confused with a commercial name”.

2. Clause 11 in Article 1 shall be restated as follows:

“11) **pirated goods** shall mean such goods as are copies or contain copies made without the consent of a copyright holder or a holder of related rights or a holder of rights to an industrial design, irrespective of whether such design is registered pursuant to the laws of the manufacturer’s country in the event that manufacturing such copies is an infringement upon rights pursuant to Ukrainian law”.

3. Clauses 11 – 41 in Article 1 shall be numbered as Clauses 12 – 42.

4. The name of Section X and the name of Chapter 45 shall be restated as follows:

“Section X. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS DURING THE MOVEMENT OF GOODS THROUGH THE CUSTOMS BORDER OF UKRAINE

Chapter 45. Measures of Customs Authorities aimed to protect Intellectual Property Rights during the Movement of Goods through the Customs Border of Ukraine “.

5. Article 255 shall be restated as follows:

“Article 255. Procedures for Customs Control and Customs Clearance of Goods containing Intellectual Property

Customs control and customs clearance of goods containing intellectual property shall be carried out pursuant to the procedures as are laid down by the Cabinet of Ministers of Ukraine”.

6. Article 256 shall be restated as follows:

“Article 256. The Customs Registry of Intellectual Property Items

A person, who holds proprietary rights to an intellectual property item under Ukrainian law and who has ground to believe that such person’s rights to such intellectual property item are or may be infringed upon in the event of movement of goods through the customs border of Ukraine, shall be entitled to file an application requesting protection of intellectual property rights with the specially authorized central agency of executive power in the customs area.

The specially authorized central agency of executive power in the customs area shall maintain the Custom Registry of Intellectual Property Items specified in Part 1 of this Article.

Procedures applicable to the registration of intellectual property items, including the form of applications, the list of information and documents attached to an application, procedures for filing and review of applications, registry maintenance procedures, as well as the list of types of intellectual property items, for which the applications may be filed, shall be determined by the Cabinet of Ministers of Ukraine.

Upon registration of an item subject to an intellectual property right, customs authorities shall undertake measures aimed to prevent the movement of counterfeit goods and pirated goods through the customs border of Ukraine.

In order to ensure that intellectual property rights are protected in the course of customs control of goods being moved through the customs border of Ukraine, information on the registered intellectual property items shall be sent to all Ukrainian customs authorities”.

7. Article 257 shall be restated as follows:

“Article 257. Suspension of Customs Clearance of Goods on the Basis of Data from the Registry of Intellectual Property Items

If on the basis of data from the Registry of Intellectual Property Items, which is maintained by the specially authorized central agency of executive power in the customs area, a customs authority discovers indications that goods presented for customs control and customs clearance are counterfeit, then the customs clearance of such goods shall be suspended, and the goods shall be placed at temporary storage warehouses of customs authorities.

The head of the customs authority or a person acting in his stead shall pass a decision to suspend the customs clearance of goods for a term of up to 15 calendar days. These persons shall be entitled to extend such term for not more than 15 calendar days.

Not later than on the next business day following the adoption of the decision to suspend the customs clearance of goods, the customs authority shall provide a notification to the person, who holds proprietary rights to the intellectual property item under Ukrainian law, about the fact that such goods have been presented for customs clearance, and shall provide a notification to the declarant about the reasons for suspending the customs clearance of the goods, the name and address of the person, who holds proprietary rights to the intellectual property item under Ukrainian law. The notification provided to the person, who holds proprietary rights to the intellectual property item under Ukrainian law, shall indicate: customs clearance of which goods specifically has been suspended, the customs value of such goods as declared by the declarant, the name and address of the owner of the goods, as well as other required information.

The person, who holds proprietary rights to the intellectual property item under Ukrainian law, and the declarant may, upon permission from the customs authority, take samples and tests of the goods, with respect to which the decision to suspend customs clearance has been passed, and send such samples and tests for expert examination. Copies of experts’ opinions shall be submitted to the customs authority.

If it has been confirmed by an expert’s conclusion, within the terms specified in Part 2 of this Article, that the goods, with respect to which the decision to suspend customs clearance has been passed, are counterfeit, the customs authority shall launch an investigation into violations of customs rules in accordance with the procedures laid down in this Code, and the goods that are the direct subject

matter of the violations shall be seized pursuant to the procedures laid down in this Code.

If it has not been confirmed, within the terms specified in Part 2 of this Article, that the goods, with respect to which the decision to suspend customs clearance has been passed, are counterfeit, such goods shall be cleared through customs in accordance with the established procedures.

In the event that the customs clearance of goods specified in this Article has been suspended, expenses connected with the storage of such goods and incurred by customs authorities and owners of temporary storage warehouses and, as provided in Part 6 of this Article, losses caused by such suspension for the declarant and other persons shall be reimbursed at the cost of the person, who holds proprietary rights to the intellectual property item under Ukrainian law. In order to ensure that the said expenses and losses are reimbursed by the person, who holds proprietary rights to the intellectual property item under Ukrainian law, a monetary bond shall be paid into an account of the specially authorized central agency of executive power in the customs area or an equivalent guarantee shall be provided to this agency. The amount of and procedures for providing monetary bonds, as well as types of equivalent guarantees and procedures for providing such guarantees shall be determined by the Cabinet of Ministers of Ukraine”.

8. The Code shall be supplemented with the following Article 257¹:

“Article 257¹. Suspension of Customs Clearance of Goods upon Initiative of the Customs Authority

If there is available official information that gives sufficient reasons to believe that, as a result of carriage through Ukraine’s customs border of certain goods, with respect to which no application requesting protection of intellectual property rights has been filed pursuant to Article 256 of this Code, the right to an intellectual property item may be infringed upon, the customs authority shall be entitled, upon its own initiative, to suspend the customs clearance of such goods.

In the event that the goods specified in Part 1 of this Article are imported into Ukraine, the customs authority at the point of entry through Ukraine’s customs border shall immediately provide notice of such fact to the customs authority at the point of designation, and shall provide to the person, who holds proprietary rights to the intellectual property item under Ukrainian law, a notification mentioned in Part 3 of Article 257 of this Code. Simultaneously, this person shall be offered – within a time period that is minimally necessary for delivering the goods to the customs authority at the point of designation, to provide such customs authority with a guarantee for reimbursing for expenses and losses if the customs clearance of the said goods is suspended.

In the event that the goods specified in Part 1 of this Article exported outside the territory of Ukraine, a notification to the person, who holds proprietary rights to the intellectual property item under Ukrainian law, with a proposal to provide guarantees, shall be provided by the customs authority that clears the said goods through customs. Such customs authority shall provide notice thereof to the customs authority, which will let the said goods enter through the Ukrainian customs border.

If, at the moment the goods specified in Part 1 of this Article are presented to the customs authority at the point of destination, the person, who holds proprietary rights to the intellectual property item under Ukrainian law, files with this authority an application requesting protection of intellectual property rights and issues a guarantee for reimbursing for expenses and losses in the event that the customs clearance of such goods has been suspended, then the customs clearance of such goods shall be suspended for the term specified in Part 2 of Article 257 of this Code, and the declarant shall be provided immediate notice of the reasons for such suspension, whereupon actions shall be taken in accordance with the provisions set forth in Parts 4 – 6 in Article 257 of this Code.

If, at the moment the goods specified in Part 1 of this Article are presented to the customs authority at the point of destination, the person, who holds proprietary rights to the intellectual property item under Ukrainian law, does not issue the guarantee for reimbursing for expenses and losses in the event that the customs clearance of such goods has been suspended, then the goods shall be cleared through customs in accordance with the established procedures “.

II. Final Provisions

1. This Law shall enter into force in 45 days as from the day of promulgation hereof.
2. The Cabinet of Ministers of Ukraine shall be required to bring its rules and regulations into conformity with this Law.