

LAW OF UKRAINE

No. 359-V of 16 November 2006

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) as follows:

1) The name of Section X and the name of Chapter 45 shall be restated as follows:

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

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

2) Articles 255-257 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 objects of intellectual property rights those enter into custom territory of Ukraine or are subject to export from custom territory of Ukraine shall be carried out pursuant to the general procedures taking into account the requirements set in this Code and in others laws of Ukraine.

The customs authorities do not apply measures connected with suspension of customs clearance in accordance with provisions of this Code to goods containing intellectual property objects, which are transited across the customs territory of Ukraine or brought in or out of the customs territory of Ukraine by natural persons in situations envisaged in section 1 of part 2 of Article 250 and section 1 of part 2 of Article 252 of this Code, for their own use and are not intended for production or other entrepreneurial activity, are sent in international post or express mail.

It is prohibited to bring products out of custom territory in unchanged form if the customs clearance of such products was suspended in connection with suspicion of an intellectual property rights infringement.

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 facilitation of protection of intellectual property rights pertaining to such person with the specially authorized central agency of executive power in the customs area by introducing respective information to the customs registry of Intellectual Property Items.

The specially authorized central agency of executive power in the customs area shall maintain

the Custom Registry of Intellectual Property Items on the grounds of applications of owners of property rights on the objects of copyright and related rights, rights on trademarks, industrial design and geographical indications.

Procedures applicable to the registration of intellectual property items in indicated customs registry, 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, shall be determined by the Cabinet of Ministers of Ukraine.

In order to facilitate the protection of intellectual property rights in the course of customs control of goods being moved through the customs border of Ukraine, information on the registered in customs registry intellectual property items shall be sent to all Ukrainian customs authorities

Upon registration in the customs registry of an item subject to an intellectual property right, customs authorities on grounds of data of such registry shall undertake measures aimed to prevent the movement of counterfeit goods through the customs border of Ukraine that could include objects of copyright and related rights, rights on trademarks, industrial design and geographical indications.

The specially authorized central agency of executive power in the customs area shall provide for publication the list of intellectual property items included to the customs registry.

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

If on the basis of data from the Customs 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 infringed upon intellectual property rights, 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 reasons and terms of such suspension, the name and address of the owner of the goods, as well as other required information.

The day, on which the customs authority sent a notification to the person, who holds proprietary rights to an intellectual property item under Ukrainian law, by fax, e-mail etc., shall be regarded as the date of receipt by the above person of the said notification.

If, within the first 15 calendar days following the receipt of the notification about the suspension of the customs clearance of goods, the person, who holds proprietary rights to the intellectual property item under Ukrainian law, does not provide a written notice to the customs authority, which suspended the customs clearance, of filing a claim in court with a view of securing protection of intellectual property rights or does not file with the said customs authority a written reasoned petition to extend the term of the suspension of the customs clearance, then the goods, whose customs clearance was suspended, shall be subject to customs clearance pursuant to the prescribed procedures.

If, within the first 15 calendar days following the receipt of the notification about the suspension of the customs clearance of goods, the person, who holds proprietary rights to the intellectual property item under Ukrainian law, provides a written notice to the customs authority, which suspended the customs clearance, of filing a claim in court with a view of securing protection

of intellectual property rights or files with the said customs authority a written reasoned petition to extend the term of the suspension of the customs clearance, then the suspension of the customs clearance may be extended by the customs authority for a time period not exceeding 15 calendar days.

In the event that during the time periods specified in Part 2 of this Article the person, who holds proprietary rights to the intellectual property item under Ukrainian law, submits to the customs authority, which suspended the customs clearance of goods, a court ruling prohibiting the taking of certain actions in the case involving an infringement upon intellectual property rights or any other decision in this matter as adopted by authorized government bodies, the customs authority shall extend the suspension of the customs clearance of goods for a time period as set by these bodies.

In the event that during the time periods specified in Part 2 of this Article the customs authority, which suspended the customs clearance of goods, is not provided with a court ruling prohibiting the taking of certain actions in the case involving an infringement upon intellectual property rights, then the goods, with respect to which the decision to suspend the customs clearance was passed, shall be subject to customs clearance pursuant to the prescribed procedures.

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 of authorized agency, 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, infringed the intellectual property rights in course in course of movement of such goods, 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.

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 8 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 specially authorized central agency of executive power in the customs area".

3) 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 sufficient information that gives 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 copyright and related rights, right on trademarks, industrial design and geographical indications may be infringed upon, the customs authority shall be entitled, upon its own initiative, to suspend the customs clearance of such goods.

The customs authority shall take measures to suspend, upon its own initiative, the customs clearance of goods, which contain intellectual property items, exclusively on a condition that there

is available information on the person, who holds proprietary rights to such intellectual property items under Ukrainian law.

In the event that the goods specified in Part 1 of this Article are imported into or exported outside Ukraine's customs territory, the customs authority, which clears such goods through customs, shall provide, on the same day, to the person, who holds proprietary rights to the intellectual property item under Ukrainian law, a notification referred to in Part 3 of Article 257 of this Code, which notification is to be sent by fax, e-mail etc. At the same time, such person shall be offered to provide, within 3 days following the receipt of such notification, to the customs authority a guarantee to reimburse for expenses and losses relating to the suspension of the customs clearance of the said goods. The day, on which the customs authority sent such notification by the said means of communications, shall be regarded as the date, on which the person received the notification.

If, within the prescribed time period, the person, who holds proprietary rights to the intellectual property item under Ukrainian law, submits to the customs authority, which sent the notification to such a person, a written application requesting protection of intellectual property rights, and provides a guarantee to reimburse for expenses and losses in the event of suspension of the customs clearance of goods that contain intellectual property items, then the customs clearance of such goods shall be suspended for the time period specified in Part 2 of Article 257 of this Code, and the declarant must be immediately informed about the reasons for the suspension, upon which the actions shall be taken pursuant to the provisions of Parts 5 – 10 of Article 257 of this Code.

If the person, who holds proprietary rights to the intellectual property item under Ukrainian law, does not submit the said application and does not provide the guarantee to reimburse for expenses and losses in the event of suspension of customs clearance of goods that contain intellectual property items, then such goods shall be subject to customs clearance pursuant to the prescribed procedures.

Procedures governing the receipt of information and cooperation of customs authorities with other law enforcement and supervisory agencies and owners of rights to intellectual property items with respect to the taking of actions specified in this Article shall be laid down by the Cabinet of Ministers of Ukraine”.

4) Article 345 shall be restated as follows:

“Article 345. Shipment of Goods through the Customs Border of Ukraine in Violation of Intellectual Property Rights

Importation into or exportation from Ukraine's customs territory of goods designated for industrial or other business activities, in violation of legislatively protected intellectual property rights – shall entail imposition of a penalty onto individuals in the amount ranging from 10 to 100 nontaxable personal minimum incomes, subject to the seizure of the goods that are being shipped in violation of intellectual property rights, and onto officers of companies – in the amount ranging from 30 to 150 nontaxable personal minimum incomes, subject to the seizure of the goods that are being shipped in violation of intellectual property rights”.

II. This Law shall enter into force in 60 days as from the day of promulgation hereof.