

**HELLENIC REPUBLIC**  
**MINISTRY OF ECONOMY AND FINANCE**  
**GENERAL ADMINISTRATION OF CUSTOMS & S.T.C**  
**19<sup>th</sup> ADMINISTRATION OF CUSTOM PROCEDURES**  
**DEPARTMENT A**  
Address: Kar. Servias 10  
101 84 Athens  
Information: S. Drosopoulou  
Phone: 210-3243183  
FAX: 210 3225731  
e-mail: [d19diadi@otenet.gr](mailto:d19diadi@otenet.gr)

Athens, April 8 2004  
Rec. No. T2620/168/A0019

**TO:** See Distribution Table

**SUBJECT:** Notification of the Council Regulation (EC) 1383/03 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

With this notified Regulation the encyclical T1023/1781/A0019/12-12-94 and T1489/79/A109/8-3-00 are abolished. The new Regulation establishes measures concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

It should be clarified that according to article 8 par. 18 of Law 2557/97 the term intellectual property comprises both copyright and related rights and industrial property, like inventions and trademarks.

The new regulation provides the following:

1. According to article 2, goods that for the purposes of this Regulation are meant as "goods infringing an intellectual property right", are the following:
  - a. Counterfeit goods
  - b. Pirated goods
  - c. Goods which, in the Member State in which the application for customs action is made, infringe:
    - A patent;
    - A supplementary protection certificate of the kind provided for in Council Regulation (EEC) No 1768/92 or Regulation (EC) No 1610/96 of the European Parliament and of the Council;
    - A national plant variety right under the law of that Member State or a Community plant variety right of the kind provided for in Council Regulation (EC) No 2100/94;
    - Designations of origin or geographical indications under the law of that Member State or Council Regulations (EEC) No 2081/92(10) and (EC) No 1493/1999;
    - Geographical designations of the kind provided for in Council Regulation (EEC) No 1576/89.

## 2. Application field

The new Regulation sets out the conditions for action by the customs authorities when goods are suspected of infringing an intellectual property right in the following situations article 1 par. 1):

- When a bill of entry is submitted for their free circulation, export or re-export
- When they are found during checks on goods entering or leaving the Community customs territory in accordance with Articles 37 and 183 of Regulation (EEC) No 2913/92, placed under a suspensive procedure within the meaning of Article 84(1)(a) of that Regulation, in the process of being re-exported subject to notification under Article 182(2) of that Regulation or placed in a free zone or free warehouse within the meaning of Article 166 of that Regulation.

In article 3 are defined in detail the cases that this Regulation is not implementing and especially for those cases concerning travellers, paragraph 2 defines that it is out of the scope of the Regulation where a traveller's personal baggage contains goods of a non-commercial nature within the limits of the duty-free allowance and there are no material indications to suggest the goods are part of commercial traffic.

## 3. Procedure of submitting an application for action

In each Member State, the right holder can lodge a written application for action of customs authorities, since the goods are come within one of the cases mentioned in article 1 par. 1 of this Regulation.

In each Member State a competent authority is defined in order to receive and review the applications for action. In Greece the competent authority shall be the Customs District of Attica.

The application for action must contain all the information needed to enable the goods in question to be readily recognised by the customs authorities, and in particular:

- An accurate and detailed technical description of the goods;
- The name and address of the representative appointed by the right-holder for contacting with the customs authorities;
- The written declaration prescribed by article 6 by which: he accepts liability towards the persons involved in a situation referred to in Article 1 par. 1 in the event that a procedure initiated pursuant to Article 9 par.1 is discontinued owing to an act or omission by the right-holder or in the event that the goods in question are subsequently found not to infringe an intellectual property right and he shall also agree to bear all costs incurred under this Regulation in keeping goods under customs control pursuant to the simplified procedure of Article 11.
- Details may also be required for certain types of intellectual property rights, referring to the type of right specifically.

Provided that they are known, right-holders should also notice any other information they may have, such as the pre-tax value of the original goods, the location of the goods or their intended destination, particulars identifying the consignment or

packages, the scheduled arrival or departure date of the goods, the means of transport used, the identity of the importer, exporter or holder of the goods, the country or countries of production and the routes used by traffickers, etc.

The competent authority reviews the application for action and notifies its decision in writing in 30 working days from the date of receipt.

Neither a fee is required from the right holder for covering the administrative expanses incurring the review of the application, nor a warranty is received.

#### 4. Acceptance of the application for action

When granting an application for action, the competent customs department shall specify the period during which the customs authorities are to take action. That period shall not exceed one year. On expiry of the period in question, and provided that the conditions of article 8 are fulfilled, the department which took the initial decision may, at the right-holder's request, extend that period.

The decision granting the right-holder's application for action shall immediately be notified to those customs offices that are likely to be concerned by the goods alleged in the application to infringe an intellectual property right.

In particular, in our country, the Customs District of Attica after the acceptance of the application for action, it transfers it immediately a) to its supervising customs, and b) to all the other Customs Districts, if an application for action has been requested by their supervising customs, in order to be transferred by them to said customs for the shake of comfort and acceleration of the information procedure of said customs.

#### 5. Conditions of taking actions

Where a customs office to which the decision granting an application by the right-holder has been forwarded ascertains that goods in one of the situations referred to in Article 1 par. 1 are suspected of infringing an intellectual property right, shall perform the following actions:

- a) It shall suspend release of the goods or detain them and shall immediately inform the competent customs department (Customs District of Attica), which issued the decision.
- b) The competent customs department (the Customs District of Attica itself) shall inform the right-holder and the declarant or holder of the goods within the meaning of Article 38 of the Community Customs Code (Council Regulation No 2913/92) of its action and is authorised to inform them of the actual or estimated quantity and the actual or supposed nature of the goods in order to notify the competent Judicial Authority to take a substantive decision, on the question if there has been an infringement of the intellectual property right; it informs him, if the are known, the names and the addresses of the recipient and the of the consignee, the consignor, the declarant or the holder of the goods and the origin and their provenance.

At the end, the customs office may take samples and, according to the national legislation, hand them over to the right-holder, at his express request, strictly for the

purposes of analysis, at his own responsibility, in order to facilitate the subsequent procedure. The samples must be returned on completion of the technical analysis.

## 6. Automated actions by the customs authorities

Customs authorities have the possibility, when they have dependable suspicion of intellectual property right infringement by the goods, to suspend release of the goods or detain them, informing immediately the right holder; the right holder has a 3 working days time limit from the notification receipt in order to lodge an application for action, or else a license receipt is granted or the goods are released, according to all relevant customs formalities.

## 7. Community right

If the applicant is a holder of a community right or a community rights on a design or pattern, a community right of a plant variety or designations of origin or geographical indications or geographical designations that are protected by the Community, the application for action may aim apart from the action of the Member State's customs authorities in which the application is lodged, and to the action of the customs authorities of one or more Member States.

In such cases the application shall indicate the Member State or States that their action is requested as well as the names and the addresses of the rightholder in each of the Member States involved.

If the application for action is accepted in Community level, the time period for action by the customs authorities shall be one year; it can be renewed by the service, which processed the initial application after a written application by the rightholder. The decision of acceptance provided by article 6 of this regulation is standing in member States in which the approval decision of the application for action is standing and the right holder agrees with the declaration that he will pay the costs of any translation necessary.

## 8. Simplified procedure for destruction

In article 11 of this Regulation, a simplified procedure for destruction under customs controls, of the detained or suspended the release of goods according to the regulation, provided that:

- the right-holder inform the customs authorities in writing within 10 working days (the time limit can be extended for 10 more days), of receipt of the notification provided for in Article 9, that the goods concerned by the procedure infringe an intellectual property right and provide those authorities with the written agreement of the declarant, the holder or the owner of the goods to abandon the goods for destruction. This agreement shall be presumed to be accepted when the declarant, the holder or the owner of the goods has not specifically opposed destruction within the prescribed period.

- the destruction to be carried out at the expense and under the responsibility of the right-holder, and be systematically preceded by the taking of samples for keeping by the customs authorities.

## 9. Release of goods – Granting a receipt license

If, within 10 working days of receipt of the notification of suspension of release or of detention –which can be extended for 10 more days maximum-, the customs office has not been notified that proceedings have been initiated to determine whether an intellectual property right has been infringed under national legislation or has not received the declarant's or right-holder's agreement for the simplified procedure of destruction, release of the goods shall be granted, or their detention shall be ended, as appropriate, subject to completion of all customs formalities.

## 10. Perishable goods

In the case of perishable goods suspected of infringing an intellectual property right, the periods referred to articles 11 (simplified procedure) and 13 (indictment of the case in the competent authority to take a substantive decision) shall be three (3) working days. That period may not be extended.

## 11. Release of goods – Granting a receipt license on provision of security

Pursuant to article 14 and for specific types of goods referred to, a receipt license can be granted or they can be released under a security, provided that the case has been transferred in the competent authority to take substantial decision, and no precaution measures has been taken and the customs formalities have been completed.

## 12. Provisions applicable to goods found to infringe an intellectual property right.

Goods found to infringe an intellectual property right, shall not be:

- allowed to enter into the Community customs territory,
- released for free circulation,
- removed from the Community customs territory,
- exported,
- re-exported,
- placed under a suspensive procedure or
- placed in a free zone or free warehouse.

## 13. Measures applicable to goods found to infringe an intellectual property right.

Any goods found that infringe the intellectual property right can be destroyed, placed out commercial circulation in order to avoid the right holder's damage and abandoned in favour of the State. It is understood that the relevant expenses shall not weigh the State.

#### **14. Liability of customs authorities**

In the case in which a customs office does not detect goods infringing an intellectual property right, the acceptance of an application shall not entitle the right-holder to compensation in the event that such goods are not detected by a customs office and are released or no action is taken to detain them.

#### **15. Penalties**

Any violation of article 16 of the notified Regulation entails imposing of sanctions according to article 155 par. 2 of the National Customs Code (Law 2690/01).

Finally we highlight that this Regulation along with the herein notified applicable provisions of Regulation 1383/03, which comprises the forms of the application for action, is under promulgation and you will be notified immediately, after its promulgation on the Official Journal of the European communities.

True Copy  
The Head Department

GENERAL MANAGER

B. MANOLOPOULOS

## DISTRIBUTION TABLE

### ADDRESSEES FOR ACTION

1. All Customs authorities
2. District Customs

### ADDRESSES FOR NOTIFICATION

1. Special decentralised authorities
  - a) DIPAE of Pireaus – Thessaloniki
  - b) DIETA
  - c) ELYT of Athens – Thessaloniki – Patras
2. General Administration of Economic Inspection – Services Inspection Administration
3. All Economic Inspection Services – At their seats
4. S.D.O.E Central and District Sevices
5. Ministry of Growth – Commercial and Industrial property Administration
6. General Chemical State Laboratory – Division of Technical Tarrification
7. Commercial and Industrial Chambers
8. Professional and Small –Medium Size Industries Cambers
9. Federation of Greek Customs Agents
10. Customs Agents Associations
11. Panhellenic Exporters Association
12. Hellenic Federation of Enterprises
13. Federation of Industries of Northern Greece
14. Exporters Federation
15. Commercial Enterprises of Foods Federation of Greece
16. Hellenic Foreign Trade Board
17. Greek Bar Associations
18. Hellenic Company for Copyright Protection SA  
Samou 51 & Fragoklisias 151 25 Marousi
19. Hellenic Copyright Organisation  
Metsovou 5, 106 82 Athens
20. Industrial Property Organization  
Pantanassis 5, 121 25 Marousi.

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