

**REPUBLIC OF COLOMBIA**  
**MINISTRY OF FINANCE AND PUBLIC CREDIT**  
**DECREE NO. 4540 OF DECEMBER 22, 2006,**  
Adopting Customs Controls to Protect Intellectual Property

**THE PRESIDENT OF THE REPUBLIC OF COLOMBIA,**

In exercise of his constitutional powers, particularly those conferred on him by Article 189(25) of the Political Constitution, subject to Article 3 of Law No. 6 of 1971 and Article 2 of Law No.7 of 1991, implementing Law No. 170 of 1994, and

**WHEREAS:**

By means of Law No. 170 of 1994, Colombia acceded to the Marrakesh Agreement Establishing the World Trade Organization (WTO), the annexes to which include the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which requires all member countries to adopt border measures aimed at protecting intellectual property;

By means of Law No. 46 of 1979, Colombia also acceded to the Convention Establishing the World Intellectual Property Organization (WIPO);

By means of Law No. 33 of 1987, Colombia acceded to the Berne Convention for the Protection of Literary and Artistic Works;

The Andean Community has established rules on intellectual property, such as Decision No. 351, by which it established the Common Provisions on Copyright and Neighboring Rights, and Decision No. 486, by which it adopted the Common Provisions on Industrial Property;

By means of Law No. 172 of 1994, Colombia ratified the Free Trade Agreement between Colombia, Mexico and Venezuela (the Group of 3), which includes provisions on border measures;

It is necessary to provide the customs administration with a legal instrument enabling it to adopt controls relating to intellectual property and thus comply with agreements established by the international community, particularly the TRIPS Agreement;

**HEREBY DECREES:**

CHAPTER I  
GENERAL PROVISIONS

**ARTICLE 1. DEFINITIONS.** The following terms have the meanings indicated below:

- **Competent authority:** the judicial authority with jurisdiction over intellectual property, which decides on the merits of the case which led to the suspension of customs clearance;
- **Copyright:** a form of legal protection which gives the creator of a literary or artistic work a set of moral and economic prerogatives allowing him to authorize or prohibit its use in any manner or by any known or future means;
- **Related rights:** a set of rights granted to performers, producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts, respectively;
- **Trademark:** any sign capable of distinguishing the goods or services of one undertaking from those of other undertakings, provided that it may be represented graphically;
- **Pirated goods:** any goods which are copies made without the consent of the owner of the copyright or related rights or of a person duly authorized by the right holder in the country of production and which are made directly or indirectly from a protected work or production where the making of those copies would have constituted an infringement of a copyright or a related right;
- **Counterfeit trademark goods:** any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark or is confusingly similar, and which thereby infringes the rights of the owner of the trademark in question;
- **Owner of the copyright or related right:** the natural or legal person who, as the original or derived owner, is empowered to authorize or prohibit any act of exploitation or use by any means of a literary or artistic work, a performance, a broadcast or a phonogram;
- **Owner of the trademark:** the owner of a trademark registration and his successors in title, assignees and exclusive licensees, as appropriate.

**ARTICLE 2. SCOPE.** For the purposes of this Decree, the customs authority will intervene in respect of allegedly pirated or counterfeit trademark goods linked to an import, export or transit operation.

**ARTICLE 3. POWERS OF THE NATIONAL TAXATION AND CUSTOMS DIRECTORATE.** In accordance with the procedure specified herein, the customs authority can temporarily suspend the import, export or transit of allegedly pirated or counterfeit trademark goods until the competent authority decides whether such circumstances exist.

The foregoing is without prejudice to seizure of the goods, when there are grounds for doing so, in which case the customs procedure to be implemented will be the determination of legal status and not the temporary suspension of customs clearance as referred to in this Decree.

When there is strong evidence that the goods are linked to a crime other than or in addition to smuggling or promotion of smuggling, they will be made available to the Public Prosecutor's Office, including as an *ex officio* measure, and in preference to any other procedure.

## **CHAPTER II PROCEDURE**

### **ARTICLE 4. APPLICATION FOR SUSPENSION OF CUSTOMS CLEARANCE.**

The holder of an intellectual property right involving goods subject to import, export or transit can request the customs administration to suspend temporarily customs clearance while the competent judicial authority decides on the complaint or application that the right holder shall file regarding the alleged piracy or trademark counterfeiting. If such circumstances are found to exist, the goods will not be released or approved for shipment, or customs transit will not take place, as the case may be.

Suspension of customs clearance can also be ordered directly by the competent authority as a precautionary measure, pending a decision on the merits of the case.

The Foreign Trade Services Division of the customs administration which handles import, export and transit (or unit in lieu thereof) will decide on the application for suspension.

**ARTICLE 5. CONTENTS OF APPLICATION.** The application shall be filed in person by the right holder, the federation or association authorized to represent him, his legal representative or his duly constituted agent. It will provide the following information:

1. The full name, identification number and residential address of the intellectual property right holder;
2. The name or business name and address of anyone authorized or licensed to enjoy the intellectual property right in Colombia;
3. A statement of the intellectual property right and of the facts constituting its infringement. If possible, the persons allegedly responsible for the infringement should be identified. If a trademark is involved, the number of the registration certificate should be indicated;
4. The place where the genuine goods are published, recorded, printed, or, in general, produced, and the manufacturer's name, address and other contact information, if known;
5. A detailed description of the genuine goods;
6. If possible, a description of the allegedly pirated or counterfeit trademark goods that are the subject of the application, and their location;
7. A request for permission to examine the goods, if this is deemed necessary and has not been done previously.

**ANNEXES.** The following documents shall be attached to the application:

1. A copy of the registration, title or document accrediting the applicant as the right holder in the event that this is legally necessary to constitute the right;
2. The power of attorney or document certifying the capacity in which he acts, if applicable;
3. If a proceeding for infringement of intellectual property rights has already been brought before the competent authority, a copy of the complaint or application in question should also be attached;
4. Evidence or indications that the right has been infringed.

**ARTICLE 6. EFFECTS OF THE APPLICATION.** The filing of an application shall have the following consequences:

1. Suspension of the storage term and consequently of the release or approval of shipment of the goods, or of the transit operation, as the case may be;
2. The impossibility to obtain direct delivery of the goods, in which case an order will be issued to transfer them to a warehouse. The same measure will be adopted in relation to goods subject to transit.

**ARTICLE 7. PROCESSING OF THE APPLICATION.** The customs administration will issue an order accepting or rejecting the application within three days after it is filed. The order accepting the application will provide for the following:

1. Suspension of customs clearance;
2. Provision by the applicant, within five days after the order becomes effective, of a bank or insurance company guarantee equivalent to 20 percent of the f.o.b. value of the goods to cover any damage caused to the importer or exporter, without prejudice to other forms of liability. A guarantee need not be provided if the applicant can show that he already did so at the time the application or complaint was filed with the competent authority. All guarantees will include an express waiver of the benefit of discussion;
3. Notification to the warehouse concerning the suspension of customs clearance; and
4. Permission for the applicant to examine the goods within five days. This measure will be accomplished in the presence of the customs authority and the costs will be borne by the applicant.

The order deciding on the application will be served in person or by mail on both the applicant and the importer, exporter or declarant, and will be subject only to a remedy of reconsideration.

In the case of highly perishable goods, and without prejudice to the application filed with the competent authority, customs clearance will not be suspended if the user so requests and provides a bank or insurance company guarantee equivalent to 100 percent of the f.o.b. value of the goods to cover any damage caused by the alleged infringement of intellectual property rights. In this case a sample of the goods can be taken.

**ARTICLE 8. INTERVENTION BY THE COMPETENT AUTHORITY.** Within 10 days following notification of the order accepting the application, the applicant shall submit to the customs administration:

1. The guarantee referred to in the preceding article, and
2. A copy of the application or complaint instituting the proceedings in question before the competent judicial authority, if he has not yet done so.

Failure to deliver these documents within the period specified above will be deemed to constitute withdrawal of the application, in which case customs clearance will continue as usual.

If the competent authority declares that there is evidence of piracy or trademark counterfeiting, the customs authority will refuse to release or approve shipment or transit of the goods, which will remain at the disposal of the competent authority.

If the competent authority decides that there is no evidence of piracy or trademark counterfeiting, the terms will be reinstated and customs clearance can continue as usual. In such a case, the customs administration will order that the guarantee be made payable to the affected party and the original copy thereof delivered to him, if the competent authority has taken no decision in that regard. This decision is not subject to appeal.

Until the competent authority decides on the merits of the case, the goods will be retained in the warehouse or free zone at the disposal of the customs authority. The costs will be borne by the customs user.

### **CHAPTER III COMMON PROVISIONS**

**ARTICLE 9. RIGHTS OF INFORMATION AND INSPECTION.** Before filing the application for suspension of customs clearance, the holder of the intellectual property right in question can examine the goods. He shall submit a request to that effect to the customs administration, describing in a general manner the goods and the facts constituting the alleged infringement of intellectual property rights. He shall attach to the request:

1. A copy of the registration, title or document accrediting him as the right holder in the event that this is legally necessary to constitute the right;
2. A copy of the power of attorney or document certifying the capacity in which he acts, if applicable.

A decision on the request will be taken within the following three days, by means of an order not subject to appeal, and will be conveyed to the importer, exporter or declarant by any means. The goods will be examined in the presence of a customs official. The applicant can be assisted by a maximum of two experts whom he hires for this purpose.

Examination of the goods will be without prejudice to the protection of *confidential* information and can be witnessed by the customs user, who may neither interfere in nor hinder the proceedings.

**ARTICLE 10. EXCLUDED OPERATIONS.** The following goods are excluded from the provisions of this Decree:

1. Those subject to the passenger system;
2. Those that do not constitute commercial shipment; and,
3. Urgent deliveries.

**ARTICLE 11. DIRECTORY OF HOLDERS.** The National Taxation and Customs Directorate may prepare a directory of holders of the intellectual property rights referred to in this Decree and their representatives or agents. Such a directory will be renewable periodically in order to facilitate rapid communication by the customs authority.

**ARTICLE 12. ENTRY INTO FORCE.** This Decree will enter into force in the month following its date of publication, and will abrogate other provisions contrary to it.

**FOR PUBLICATION AND EXECUTION**

Done at Bogotá, Colombia, on December 22, 2006

**ÁLVARO URIBE VÉLEZ**  
PRESIDENT OF THE REPUBLIC

**ALBERTO CARRASQUILLA BARRERA**  
Minister of Finance and Public Credit

**JORGE HUMBERTO BOTERO ANGULO**  
Minister of Trade, Industry and Tourism