

Law on Border Measures Related to Intellectual Property

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1. PURPOSE OF THE LAW

The Law establishes the rule of applying the special border measures on the customs' territory of Georgia at releasing in free circulation (importation) or at exportation from Georgia of the goods infringing the copyright, rights on appellation of origin and geographical indications of goods or counterfeit goods. It is based on the provisions on Special Border Measures of the Agreement on Trade Related Aspects of Intellectual Property Rights concluded in the framework of the World Trade Organization.

ARTICLE 2. EXPLANATION OF DEFINITIONS USED IN THE LAW

The definitions used in the Law have the following meaning:

- a) right holder - any natural person or legal entity, which in respect to the legislation of Georgia has the copyright, exclusive right on a trademark or the right to use the registered appellation of origin or geographical indication;
- b) pirated copyright goods - any goods which are copies made without consent of the right holder or person duly authorized by the right holder in the country of production, and which, if made in Georgia is produced in infringement of a copyright or a related right under the Law of Georgia;
- c) goods infringing the rights on the appellations of origin and geographical indications of goods - any goods on which the appellation of origin or geographical indication is used illegally;
- d) counterfeit 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 essentially from such a trademark, and which thereby infringes the trademark holder's rights defined by the Law of Georgia;
- e) "De Minimis" imports - small quantity of goods having a non-commercial nature contained in traveler's luggage or sent in small containers.

CHAPTER II. SUSPENSION OF GOODS

ARTICLE 3. SUSPENSION OF GOODS BY CUSTOMS AUTHORITIES

A right holder, who has valid grounds for suspecting, that the importation or exportation of pirated copyright goods, or of goods produced in infringement of rights on appellation of origin or geographical indication of goods or counterfeit goods may take place, may apply to the Court and demand the suspension of importation or exportation of such goods.

ARTICLE 4. APPLICATION

1. The right holder applying for suspension of goods release in respect to the Article 3 of this Law, shall submit to the Court in writing:

- a) relevant evidence, that the rights of the right holder defined by the legislation of Georgia are being infringed;
 - b) detailed description of the goods to make them readily recognizable by the Customs authorities;
 - c) if required by the Court, provide assurance. Such assurance shall be provided by sum of money or by presenting securities, which in respect to the Civil Procedure Code is acceptable for providing the assurance.
2. The parties, on basis of their application in no later than 3 days, shall be served with the copies of the Court decision and informed on the defined terms of taking the respective measures by the State Customs Department of Georgia.

ARTICLE 5. DURATION OF GOODS SUSPENSION

If within 14 days from taking the judgment by the Court the right holder fails to sue at the Court, the suspended goods shall be released.

ARTICLE 6. COMPENSATION OF DAMAGES

The Court may require the plaintiff to compensate the Importer, Exporter, Consignee or proprietor of the goods the damages suffered by suspension of the goods.

ARTICLE 7. RIGHT OF INSPECTION AND INFORMATION

Without prejudice to the protection of confidential information, the State Customs Department provides for inspection of the goods suspended by the right holder. The State Customs Department shall notify the Importer or Exporter of any such inspection and provides him an opportunity to be present and an equal opportunity to have the goods inspected. Where a Court has issued a decision upholding the claims of the right holder, the State Customs Department shall inform the right holder of names and addresses of the Consignor, Importer, Exporter and the Consignee, and the quantity of the goods in question.

ARTICLE 8. REMEDIES

1. Where the Court has issued a decision in favor of the right holder the State Customs Department in respect to the paragraph 2 of this Article takes the decision on destruction or other appropriate disposal of the goods.
2. The rule on destruction or other appropriate disposal of the goods infringing the copyright, rights on appellation of origin or geographical indications or counterfeit goods is defined by respective normative act.
3. Where the Court has made a decision in favor of the right holder the State Customs Department shall not allow the exportation or re-exportation of the counterfeit goods.

ARTICLE 9. “DE MINIMIS” IMPORTS

This Law shall not apply to small quantities of goods of a non-commercial nature contained in traveler’s luggage or sent in small containers.

CHAPTER III. TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 10. TRANSITIONAL PROVISIONS

Oblige the Chairman of the State Customs Department to issue the rule on destruction or

other appropriate disposal of the goods infringing the copyright, rights on appellation of origin or geographical indication or counterfeit within 2 months from enacting the Law.

ARTICLE 11. FINAL PROVISIONS

The Law shall be enacted at publication.
