

Based on the Article 67. paragraph 3 and the Article 295 of the Customs Law (RM Official Gazette No. 7/02, 38/02 and 21/03 the Government of the Republic of Montenegro at its session on April 7, 2005 has issued the following

**REGULATION ON ACTIONS OF THE CUSTOMS AUTHORITY**



to a protected work, performance, phonogram, broadcast, transmission or similar subject matter, or protects any copyright or any rights related to copyright or facilitate the detection of counterfeit trademark or pirated copyright goods.

- (2) Any mould or matrix, which is specifically designed or adapted for the manufacture of a counterfeit trade mark or of goods bearing such a trade mark or of pirated goods shall be treated as 'Counterfeit Trademark Goods' or 'Pirated Copyright Goods'.

## **II. PROCEDURE UPON THE APPLICATION OF THE RIGHT HOLDER**

### **Application**

#### **Article 3**

- (1) The customs authority shall, upon application of the Right Holder, suspend the customs procedures and withhold imported, exported or transited goods suspected to be in violation of intellectual property rights.
- (2) The application may be:
  - 1) individual, related to a particular consignment of goods, or
  - 2) general, related to all consignments of goods within the established period of time.

### **Content of the Application**

#### **Article 4**

- (1) Any Right Holder may lodge the application referred to in Article 3, paragraph 1 of this Regulation, in writing, with the Customs Administration, at the address of its headquarters.
- (2) The application referred to in paragraph 1 shall include a description of the goods sufficiently detailed to enable the customs authorities to recognize them, together with proof that the applicant is the holder of the right related to the goods in question.
- (3) The applicant referred to in paragraph 1 may also provide all other information available to him, including the information:
  - 1) identifying the consignment or packages;
  - 2) on the place where the goods are situated or their intended destination;
  - 3) on the country or countries of origin or exporting country of suspect goods;
  - 4) on the identity of the manufacturer, importer, exporter or holder of the goods;
  - 5) on the scheduled date of arrival or departure of the goods;
  - 6) on the means of transport used; and
  - 7) on the customs authority where it is anticipated that the suspect goods will be presented, and the anticipated date of presentation.

- (4) The applicant may provide a sample of goods suspected to be in violation intellectual property right, as well as

the procedure was discontinued owing to an act or omission by the applicant, or where the goods in question were subseque

competent court have been initiated, or that the proceeding have been initiated but the provisional measure has not been granted, the customs authority shall resume the customs procedure, and after its completion, release the goods.

- (3) The Right Holder shall notify the customs authority when the procedure before the competent court is completed and the final and enforceable decision issued.

### **III. EX OFFICIO PROCEDURE**

#### **Suspension of the Procedure**

##### **Article 11**

- (1) The customs authority may suspend the customs procedures and detain the goods *ex officio*, if the customs authority based on *prima facie* evidence is satisfied that any intellectual property rights are being infringed.
- (2) In the event referred to in paragraph 1 of this Article, the customs authority shall notify without delay:
  - 1) The importer; exporter, declarant and/or owner of the goods;
  - 2) The Right Holder or his representative if the address is available to the customs authority; and
  - 3) The authorities responsible for protection of intellectual property rights.
- (3) The information referred to in paragraph 2 of this Article shall include the warning to the importer; exporter, declarant and/or owner of the goods that detained goods may be confiscated and destroyed if confiscation and destruction is not contested within 10 working days as of the day the

## IV. LIABILITY

### Compensation of Damages Article 13

- (1) The customs authority shall not be liable to the importer or the owner of the goods for any damages resulting from withholding the release of the goods pursuant to Article 1, paragraph 1 and Article 11 paragraph 1 of this Regulation.
- (2) However, the applicant shall pay to the importer and the owner of the goods compensation for any injury caused to them through the wrongful detention of goods.

## V. DESTRUCTION OF GOODS

### Court Ordered Destruction Article 14

- (1) Where it was decided in the proceedings before the competent court that Infringing Goods are subject to destruction or disposal outside normal channels of commerce by any other manner, the customs authority shall have them destroyed under the customs supervision or dispose of them outside normal channels of commerce by any other manner (including donation for humanitarian purposes and recycling), provided that:
  - 1) The manner of disposal minimizes the risks of further infringements;
  - 2) Such disposal shall be without detriment to the Right Holder; and
  - 3) The Right Holder is allowed to suggest appropriate manner of disposal of the goods.
- (2) The following shall not be regarded as disposal outside normal channels of commerce referred to in paragraph 1 of this Article:
  - 1) re-exporting the Infringing Goods in an unaltered state;
  - 2) simple removal of trade marks that have been affixed to the counterfeit goods without authorization; or
  - 3) placing the goods under a duty-free customs procedure.

### Ex Officio Destruction Article 15

- (1) The customs authority shall be authorized to confiscate and order destruction of detained goods or to order them disposed outside of normal channels of commerce ex-officio and without a court order, where:
  - 1) There are grounds to suspect that the goods are Infringing Goods and;

- 2) The importer, exporter, declarant and/or owner of the goods has been notified of the suspension pursuant Article 11, paragraph 2 of this Regulation, and did not oppose the confiscation or destruction of such goods within the time limits referred to in Article 11, paragraph 3 of this Regulation.
- (2) The customs authority shall be authorized to act in accordance with paragraph 1 of this Article if after reasonable efforts by the customs authority the importer, declarant, exporter and/or owner of the goods has not been reachable to the custom authority.

**Taking of Samples**  
**Article 16**

If the destruction has been authorized by a court order or by the customs authority, Right Holder shall have the opportunity prior to the destruction of goods to take samples, insofar as and to the extent that such samples are needed as evidence in pending or future legal actions against third parties involved in infringing intellectual property rights.

**VI. FINAL PROVISION**

**Coming Into Force**  
**Article 17**

This Regulation shall come into force on the eighth day after its publication in the Official Gazette of the Republic of Montenegro, and shall be effective as of July 1, 2005.