

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:

. To amend the Customs Code of Ukraine (Vidomosti Verkhovnoji Rady Ukrajinjy [*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

~~Containing objects and customs clearance of goods~~
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 inte

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

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 y bll bey ble 25uarantee s0

