

Law of Georgia on Border Measures Relating to Intellectual Property

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of the Law (28.12.2005 #2558)

This Law sets out the procedure for applying special border measures when goods that enter the Georgian customs territory for release for free circulation (importation), are placed in the customs warehouse or under temporary storage, or are exported from Georgia or counterfeit goods are found to infringe a copyright and related right, the database producers' rights, protected designation of origin, protected geographical indication, or be counterfeit goods. It shall be based on the provisions 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 who, under the legislation of Georgia, is the holder of a copyright or related rights, the database producer right, has the exclusive right in a trademark or is authorized to use the registered designation of origin or geographical indication; **(28.12.2005 #2558)**
- b) pirated goods – any goods which are or contain copies made without the consent of holder of a copyright or related right, or of a person authorized by the right-holder in the country of production in cases where the making of those copies would constitute an infringement of that right under the Georgian law; **(28.12.2005 #2558)**
- 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 (28.12.2005 #2558)

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS BY THE COMPETENT SERVICE

Article 3. Register of Intellectual Property Objects

A competent service of the Ministry of Finance of Georgia (hereinafter "the Competent Service") shall exercise the protection of the rights of the right-holders to the objects of intellectual property that have been entered right in the Register of Intellectual Property Objects of the competent service (hereinafter "the Register"). (29.12.2006, #4276)

Article 4. Registration procedure and conditions

1. A right-holder or his representative (hereinafter "the Applicant") may apply in writing to the Competent Service for entry (registration) of an object of intellectual property have in the Register and for action when goods that enter the Georgian customs territory for release for free circulation (importation), are placed in the customs warehouse or under temporary storage, or are exported from Georgia or counterfeit goods are found to infringe a copyright and related right, the database producers' rights, protected designation of origin, protected geographical indication, or be counterfeit goods and for protection of his rights. (29.12.2006, #4276)

2. The application for registration shall contain:

a) the name (denomination) and address of the applicant;

b) the information concerning an object of intellectual property, an accurate and details descriptions of goods incorporating the intellectual property object, other particulars that would assist the Competent Service in identifying the goods; (29.12.2006, #4276)

c) a document certifying the right-holder's right to the intellectual property object (certificate, licensing contract or other document prescribed by the Georgian law) or an original copy or a copy of the intellectual property object;

(d) a period of the registration which shall not exceed 2 years. The said period may be extended at the Applicant's request, without restricting the number of extensions, but not in excess of the validity of the intellectual property rights. In the case of the registration extension, the applicant shall produce a document certifying the right-holders rights to the intellectual property object;

(e) a statement to the effect that the applicant undertakes to reimburse the possible material damage incurred by a third party as a result of detention of goods, as well as the costs of Competent Service in connection with the detention of goods after the Applicant has been given a possibility to check the detained goods, in the event where suspicions of the Competent Service/Applicant are found to be ungrounded; (29.12.2006, #4276)

(f) where appropriate, a specimen of the goods incorporating an object of intellectual property;

(g) the information concerning the origin, location, transportation or the holder of the goods made in infringement of intellectual property rights (where available).

3. The Competent Service shall, within one month, take a reasoned decision on the entry of the object of intellectual property in the Register or on refusal of the registration. (29.12.2006, #4276)

4. The applicant shall immediately notify the Competent Service of any change in the application particulars. (29.12.2006, #4276)

5. The Competent Service shall be authorized to decide on the removal of an object of intellectual property from the Register if: (29.12.2006, #4276)

(a) for the purpose of extending the period of protection of the intellectual property rights, the Applicant fails to ensure the meeting of the requirements of Article 4(2)(c), (d) and (e) of this Law;

(b) the Competent Service finds that the Applicant has lost the intellectual property rights protected under the Georgian law.

Article 5. Detention of goods (29.12.2006, #4276)

1. Where, in performing the customs procedure, the Competent Service is satisfied that that the goods are suspected of infringing the rights in the registered [protected] object of intellectual property, it shall decide on the detention on the movement, placing under customs control and/or on the suspension of customs procedures for a period of 10 working days (hereinafter "the detention of goods"). In the

case of perishable goods suspected of infringing intellectual property rights, this period shall be 6 working days.

2. The Competent Service's decision and the name(s) of the importer, exporter and/or the holder of the goods shall be immediately notified to the Applicant. The said decision and the name (denomination) and address of the Applicant shall be immediately notified to the holder of the goods as well.

Article 6. Inspection of the goods and right to be informed

1. Subject to the consent of the Competent Service, the Applicant shall be afforded the opportunity to inspect the detained goods and take samples thereof in the presence of the holder of the goods (or his representative). (29.12.2006, #4276)

2. The Applicant may request to extend the detention of goods for a period of 10 working days for the purposes of analysis of a sample of the detained goods. In the case of perishable goods, that period may not be extended.

3. The Competent Service shall provide the Applicant and the holder of the goods (or his representative) with information which is necessary for identification and inspection of the goods. The said information is confidential and shall not be disclosed, except for the cases prescribed by the Georgian law. Disclosure of such information by the Applicant shall entail cancellation of the registration of an object of intellectual property or suspension of the procedure provided for by Article 5(1) of this Law. (29.12.2006, #4276)

Article 7. Reversal of a decision on detention of goods

1. The Competent Service shall reverse a decision on the detention of goods: (29.12.2006, #4276)

(a) if so requested by the Applicant;

(b) in the event where the procedure provided for by Article 8(1) of this Law has not been performed and the Applicant, during validity of a decision on the detention of goods, has not contested before the court an infringement of his intellectual property rights;

(c) where the Competent Service has decided to remove an object of intellectual property from the Register.

2. If, during validity of a decision on the detention of goods, the Applicant applies to the court with an appeal against infringement of his intellectual property rights, all relations in connections with the detention of goods (including the length of detention, the amount of the damage caused, the fact of infringement) shall be governed by the Georgian law.

3. If, during validity of a decision on the detention of goods, the Applicant applies to the court with an appeal against infringement of his intellectual property rights, he shall be required to provide the Competent Service with a security to cover the possible material damage incurred by a third party as a result of detention of goods, as well as the costs of the Competent Service in connection with the detention of goods. (29.12.2006, #4276)

4. The liability of the Applicant referred to above shall be acknowledged by a caution, bank guarantee or liability insurance contract.

5. The amount of security shall be assessed by the Competent Service, taking into consideration opinions of the holder of intellectual property rights (or his representative), the Applicant and other interested parties, on the provision of the relevant documents and information. (29.12.2006, #4276)

Article 8: Disposal and destruction of goods by the Competent Service

(29.12.2006, #4276)

1. If, within 7 working days from the notification provided for by Article 5(2) of this Law, the Applicant and the importer, exporter and/or holder or owner of the goods provide the Competent Service with a written agreement to the effect that the holder or owner of the goods abandons the detained goods, the Competent Service shall destroy the detained goods at the expense and under the responsibility of the holder or owner of the goods. This rule shall also apply if the holder or owner of the goods has not responded to the notification by the Competent Service or opposed the right-holder's decision on the destruction of the detained goods within the prescribed period. In the case of perishable goods, the period of provision of the notification to the Competent Service shall be 4 working days. (29.12.2006, #4276)

2. The Competent Service shall retain a specimen of the destroyed goods to be used as evidence. (29.12.2006, #4276)

3. The detained goods may not be subjected to destruction but used for humanitarian or charitable purposes but only with the consent of the Applicant and on condition that the detained goods will not endanger human life or health.

Article 9: "De Minimis" Imports

This Law shall not apply to small quantities of non-commercial goods of a non-commercial nature contained in traveller'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.

President of Georgia

Eduard Shevardnadze

Tbilisi,

23 June 1999

No. 2159-Il