

Chapter 52

Measures to Protect Intellectual Property Rights Taken by Customs Authorities

Article 384. General Provisions on Measures to Protect Intellectual Property Rights Taken by Customs Authorities

1. The customs authorities shall take measures to protect intellectual property rights established in Article 124 herein when placing goods under customs procedures except for placing goods under the customs transit procedure, customs destruction procedure as well as special customs procedure taking into account paragraph 2 of this Article.

2. Based on requests from the Member States, the Commission shall be entitled to determine the cases and the procedure for measures to protect intellectual property rights for certain categories of goods, which are subject to a special customs procedure.

3. Measures to protect intellectual property rights shall not be taken by the customs authorities when placing under the customs procedures goods moved across the customs border of the Union that are intended for the official use by the diplomatic missions and consular offices, missions of States at international organizations, international organizations or their missions, other organizations or their missions located in the territory of the Union.

4. Measures to protect intellectual property rights taken by the customs authorities shall not exclude the right of the rights holder to use any other remedies in accordance with the legislation of the Member States and the international treaties of the Member States with a third party.

5. The customs authorities of a Member State shall take measures to protect intellectual property rights included in the common customs registry of intellectual property of the Member States and/or the national customs registry of intellectual property maintained by the customs authorities of that Member State.

6. Measures to protect intellectual property rights in respect of goods containing intellectual property items, such as geographical indications of goods included in the common customs registry of intellectual property of the Member States, shall be taken in accordance with the procedure defined by the Commission.

7. It can be stipulated in accordance with the legislation of the Member States that the customs authorities shall take measures to protect intellectual property rights in respect of goods containing intellectual property items not included in these customs registries.

Article 385. Common Customs Registry of Intellectual Property of the Member States

1. The common customs registry of intellectual property of the Member States shall be maintained by the Commission.

2. On the basis of an application of the rights holder or a person representing his/her/its interests or interests of several rights holders, the common customs registry of intellectual property of the Member States shall include intellectual property items protected in each Member State.

One of the rights holders of similar intellectual property items may act as a person representing the interests of several rights holders upon agreement with other rights holders.

3. Intellectual property items that may be included in the common customs registry of intellectual property of the Member States shall comprise subject matter of copyright and related rights, trademarks, service marks and geographical indications of goods.

4. The rights holder that has reasonable grounds to believe that there may be a violation of his/her/its intellectual property rights under international treaties and acts being part of the law of the Union, and/or the legislation of the Member States with regard to movement of goods across the customs border of the Union

or when performing other actions with goods under customs control, shall be entitled to submit an application for inclusion of an intellectual property item in the common customs registry of intellectual property of the Member States (hereinafter referred to in this Chapter as the application).

5. The application shall be submitted to the Commission in respect of one type of intellectual property.

The application on behalf of the rights holder not having a permanent representation in the customs territory of the Union may be filed through persons having a permanent location (registered) in the territory of a Member State.

6. The application shall be enclosed with the documents proving the existence of the intellectual property right in each Member State (certificates, agreements, including on the transfer of rights and licensing agreements, other documents which the rights holder or person representing the interests of the rights holder(s) may submit in support of his/her/its intellectual property rights in each Member State in accordance with its legislation) as well as documents confirming the information to be specified in the application.

The application may be enclosed with samples of goods, which may confirm a violation of his/her/its intellectual property rights, according to the rights holder or a person representing the interests of the rights holder (several rights holders).

7. If the application is filed by a person representing the interests of the rights holder (several rights holders), the application shall also be accompanied by a power(s) of attorney issued by the rights holder (several rights holders) to such person. The power(s) of attorney shall be valid throughout the Union.

If the rights for similar intellectual property items belong to different rights holders in the territories of the Member States, the application shall be accompanied by powers of attorney from each of the respective rights holders.

8. The application and the enclosed documents shall be submitted in Russian or another language. In the case of submission of documents in another language, the application shall be accompanied by their translation into Russian.

9. An obligation of the rights holder (several rights holders) on compensation for damage to property, which may be caused to the declarant, owner, recipient of goods or to any other person due to suspension of goods release, shall be submitted together with the application.

If the rights for similar intellectual property items belong to different rights holders in the territories of the Member States, an obligation on compensation for damage to property of each rights holder shall be submitted.

10. The Commission shall establish the regulation for maintaining the common customs registry of intellectual property of the Member States, which includes requirements for drawing up and reviewing the application, the scope of submitted information and documents, time limits and procedure for reviewing the application, as well as the procedure for inclusion in the registry of intellectual property, exclusion of such intellectual property, making changes (additions), extension of the term established for the protection of the rights of the intellectual property rights holders, the procedure for cooperation between the customs authorities and the Commission while including intellectual property in the common customs registry of intellectual property of the Member States and maintaining this registry (hereinafter referred to in this Article as the Regulation).

11. The rights holder, in order to guarantee that the obligation under paragraph 9 of this Article is fulfilled, within one month from the date a notice is sent to him/her/it on the possibility of including the intellectual property into the common customs registry of intellectual property of the Member States, shall submit to the Commission the insurance contract(s) against liability for inflicting damage to property of persons due to suspension of goods release or another contract(s) confirming fulfilment of this obligation legally binding in all the Member States.

The amount insured or the security for fulfilling the obligation shall be equivalent to not less than 10,000 euro at the exchange rate on the date of

conclusion of the liability insurance contract(s) or other contract(s) or introducing changes in such contracts.

If there is a duly executed power of attorney (powers of attorney) to represent the interests of the rights holder (several rights holders) in the customs authorities or another document confirming such powers, the obligation referred to in paragraph 9 of this Article, and the contracts stipulated in the first indent of this paragraph may be drawn up and submitted by a person representing the interests of the rights holder (several rights holders).

12. If the contract(s) stipulated in the first indent of paragraph 11 of this Article is(are) not submitted, intellectual property shall not be included in the common customs registry of intellectual property of the Member States, and the applicant shall be notified thereof in accordance with the procedure and within the time limits stipulated in the regulation.

13. Inclusion of intellectual property in the common customs registry of intellectual property of the Member States shall be free of charge.

14. The information included in the common customs registry of intellectual property of the Member States shall be published on the official websites of the Union and the customs authorities on the Internet.

Article 386. National Customs Registries of Intellectual Property

1. Customs authorities of the Member States shall maintain national customs registries of intellectual property, which shall be protected by the customs authorities in the territories of such Member States.

2. Based on the application of the rights holder or a person representing the interests of the rights holder (several rights holders), the national customs registries of intellectual property shall include intellectual property, the rights for which are protected in the Member State, the customs authority of which maintains such customs registry.

3. The terms of and procedure for the inclusion of intellectual property in the national customs registries of intellectual property, as well as the procedure for maintaining such registries shall be established by the customs legislation of the Member States.

Article 387. Time Limit for Protection of Intellectual Property Rights by the Customs Authorities

1. The time limit for protection of intellectual property rights by the customs authorities shall be set when intellectual property is included in the common customs registry of intellectual property of the Member States taking into account the term specified in the application of the rights holder, as well as the validity of the documents enclosed with the application, but could not exceed two years from the date of inclusion in the registry.

2. The time limit specified in paragraph 1 of this Article shall be extended on the basis of an application of the rights holder or a person representing the interests of the rights holder (several rights holders) for unlimited number of times, but each time for not more than two years, subject to compliance with the requirements stipulated in this Chapter.

3. The time limit for protection of intellectual property rights by the customs authorities when including intellectual property in the national customs registries of intellectual property shall be established in accordance with the customs regulation legislation of the Member States.

4. The time limit for protection of intellectual property rights by the customs authorities may not exceed the term of validity of the exclusive right of the rights holder for the relevant intellectual property.

The time limit for protection of intellectual property rights by the customs authorities established upon inclusion in the common customs registry of intellectual property of the Member States may not exceed the time limit for legal

protection of intellectual property in the Member State where that time period expires earlier.

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Article 463. Transitional Provisions in Respect of Application of Article 385 Herein

Notwithstanding the provisions of Article 385, paragraph 3 herein, the intellectual property, such as geographical indications of goods, shall be included in the common customs registry of intellectual property of the Member States after the entry into force of the decision of the Commission stipulated by Article 384, paragraph 6 herein, which regulates the procedure for the customs authorities taking the measures to protect intellectual property rights in respect of goods containing intellectual property, such as geographical indications of goods.

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