

## ***Act on Prevention of Importation and Exportation of Goods Infringing Intellectual Property Rights***

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11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134;

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

15.05.2002 entered into force 01.07.2002 - RT I 2002, 44, 284;

17.10.2001 entered into force 01.07.2002 - RT I 2001, 88, 531.

### **§ 1. Scope of application of Act ➡**

This Act regulates prevention of the importation and exportation of goods infringing

intellectual property rights in the course of customs control. Intellectual property is deemed to mean the rights specified in Article 2 of the Convention Establishing the World Intellectual Property Organization (WIPO) (RT II 1993, 25, 55).

## **§ 2. Limitations on scope of application ➡**

This Act does not apply to personal effects carried by a traveller across the customs frontier, if the nature and amount of the effects correspond to the purpose of the trip.

## **§ 3. Goods infringing intellectual property right ➡**

(1) The following are goods infringing an intellectual property right:

1) counterfeit goods within the meaning of subsection 33 (4) of the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 91/93, 1500; 1999, 93, 834; 102, 907; 2001, 27, 151; 56, 332; 335; 2002, 63, 387) and goods to which a registered geographical indication within the meaning of § 11 of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336; 63, 387) has been unlawfully affixed;

2) packaging of goods, presented either separately from or together with the goods, and any economic or business document, advertising material, logo, label, sticker, brochure, instructions for use or guarantee document, to which a sign has been affixed under the same circumstances as the goods specified in clause 1) of this subsection;

3) goods infringing the rights of owners of industrial designs provided for in the Industrial Design Protection Act (RT I 1997, 87, 1466; 2002, 9, 45; 53, 336; 63, 387);

4) pirated copies within the meaning of § 801 of the Copyright Act (RT 1992, 49, 615; RT I 2000, 16, 109; 78, 497; 2001, 50, 289; 56, 335; 2002, 53, 336; 63, 387);

5) goods infringing the rights of proprietors of patents provided for in the Patents Act (RT I 1994, 25, 406; 1998, 74, 1227; 107, 1768; 1999, 84, 764; 2001, 27, 151; 93, 565; 2002, 53, 336) and the rights of persons whose medicinal products or plant protection products are subject to additional legal protection;

6) goods infringing the rights of owners of utility models provided for in the Utility Models Act (RT I 1994, 25, 407; 2000, 60, 388; 2001, 27, 151; 2002, 53, 336; 63, 387);

7) goods infringing the rights of owners of layout-designs of integrated circuits provided for in the Layout-Designs of Integrated Circuits Protection Act (RT I 1998, 108/109, 1783; 2001, 27, 151; 93, 565; 2002, 53, 336).

(2) Any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right shall be treated as goods infringing the intellectual property right, provided that the use of such moulds or matrices infringes the rights of the proprietor of the intellectual property right.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) Suspected goods are goods with regard to which there is reason to believe that they

infringe an intellectual property right.

#### **§ 4. Importation and exportation ➡**

For the purposes of this Act, the following are importation and exportation:

- 1) release for free circulation and export;
- 2) customs warehousing, transit, inward processing, temporary importation and processing under customs control;
- 3) storage of goods under customs supervision, in a free zone and free warehouse.

(17.10.2001 entered into force 01.07.2002 - RT I 2001, 88, 531)

#### **§ 5. Proprietor of right and person involved ➡**

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(1) For the purposes of this Act, the following are proprietors of an intellectual property right (hereinafter proprietor of a right):

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 1) an author or the proprietor of the copyright;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 2) a proprietor of related rights;

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

- 3) a proprietor of a trade mark, or the licensee;

- 4) an owner of an industrial design, or the licensee;

- 5) a holder of a patent, or a person whose medicinal product or plant protection product is subject to additional legal protection, or the licensee;

- 6) a lawful user of a registered geographical indication;

- 7) an owner of a utility model, or the licensee;

- 8) an owner of a layout-design of an integrated circuit, or the licensee.

(2) The declarant, the consignee upon importation of goods, the consignor upon exportation of goods, and the holder of the goods are persons involved.

## **§ 6. Importation and exportation of goods infringing intellectual property rights ➡**

The importation and exportation of goods infringing intellectual property rights is prohibited and punishable pursuant to criminal procedure or the procedure provided for by the Customs Code.

(17.10.2001 entered into force 01.07.2002 - RT I 2001, 88, 531)

## **§ 7. Application by proprietor of right ➡**

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(1) In order to prevent the importation or exportation of goods infringing an intellectual property right, the proprietor of the right may submit a written application to the customs authorities to protect the rights of the proprietor and request the customs authorities to take action (hereinafter application). An application is valid until the expiry of the term indicated in the application or until extinguishment of the rights of the proprietor of the right, but for not longer than two years.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) An application may also be submitted if the customs authorities have suspended the release of suspected goods on their own initiative and notified the proprietor of the right thereof.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) An application shall set out:

- 1) the name, residence or seat, and telecommunications numbers of the applicant;
- 2) a request to detain the suspected goods;
- 3) a detailed description of the goods which enables the customs authorities to identify the goods;
- 4) a term of up to two years during which the customs authorities are requested to take action;
- 5) confirmation that the applicant is the proprietor of the right or the representative of the proprietor of the right.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) An application may contain other pertinent information available to the proprietor of the right, including information for identification of the consignment or packaging, the estimated date of arrival or dispatch of the goods, the location of the goods, the means of transport used, and the personal data of the consignor, consignee or declarant.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(5) The customs authorities may require an applicant to submit additional documents to prove the rights of the applicant or the authority of the representative of the applicant.

(6) The proprietor of a right is responsible for the correctness of the information submitted.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(7) The customs authorities shall notify an applicant of a decision to satisfy or deny the application in writing within ten working days after the date of receipt of the application. If the application concerns goods the release of which has been suspended pursuant to the procedure established in § 9 of this Act, the customs authorities shall make a decision and notify the applicant thereof not later than on the working day following the receipt of the application. If the application is denied, the reasons shall be provided.

(8) The format of the application and the procedure for submitting and reviewing applications shall be established by the Minister of Finance.

### **§ 8. Proof of holding rights ➡**

(1) At the request of the customs authorities, a person specified in clauses 5 (1) 3)–8) of this Act shall submit an extract from the corresponding state register in order to prove the rights of the person. If a licensee is the proprietor of a right but the licence is not entered in the corresponding register, the licensee shall additionally submit an extract from the licence agreement.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) A person specified in clauses 5 (1) 1) or 2) of this Act shall prove the rights thereof with a document certifying those rights, if the Copyright Act provides for the issue of such document.

(3) A proprietor of a right who has submitted an application to the customs authorities is required to notify the customs authorities promptly if the rights of the proprietor are revoked or extinguished.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### **§ 9. Suspension of release of suspected goods ➡**

(1) If the proprietor of a right has not submitted an application provided for in § 7 of this Act or the application has been denied but if, in the course of inspection of imported or exported goods, it is suspected that the goods under inspection infringe an intellectual property right, the customs authorities shall notify the proprietor of the right of the potential infringement.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The customs authorities shall suspend the release of suspected goods on their own initiative for three working days as of the date following the date of detection of the

suspected goods, in order to enable the proprietor of the right to submit an application pursuant to the provisions of § 7 of this Act.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) The customs authorities are required to notify the person involved promptly of any suspension of the release of suspected goods.

(4) If the proprietor of a right does not submit an application within the term specified in subsection (2) of this section, the customs authorities shall cease applying the measures specified in the same subsection.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### **§ 10. Storage of suspected goods under customs control ➡**

(1) If the proprietor of a right has submitted an application specified in § 7 of this Act, the customs authorities have the right to store the suspected goods under customs control for ten working days in order to enable the proprietor of the right to give an opinion on the goods.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) The customs authorities are required to notify the person involved and the proprietor of the right promptly if suspected goods are stored under customs control.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) In order to store suspected goods under customs control, a customs official authorised by the Director General of the Customs Board shall make a decision which shall set out:

- 1) the name and address of the person involved;
- 2) the name and address of the customs authority;
- 3) the name and position of the official who made the decision;
- 4) the date on which the decision was made;
- 5) the circumstances on the basis of which the decision was made and references to the provisions of the corresponding Acts;
- 6) the term for keeping the suspected goods under customs control;
- 7) sanctions to be imposed on the person involved in the case of failure to comply with the decision;
- 8) the procedure and term for appeal against the decision.

(4) In order to extend the term for keeping suspected goods under customs control

pursuant to the provisions of subsection 11 (2) of this Act, the customs authorities shall make a new decision which sets out the information listed in subsection (3) of this section.

(5) At the request of the proprietor of a right, the customs authorities shall notify the proprietor of the right of the names and addresses of the persons involved in accordance with the Personal Data Protection Act (RT I 1996, 48, 944; 1998, 59, 941; 111, 1833; 2000, 50, 317; 92, 597; 104, 685; 2001, 50, 283; 2002, 61, 375; 63, 387).

(15.05.2002 entered into force 01.07.2002 - RT I 2002, 44, 284; 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(6) The customs authorities shall afford the person involved and the proprietor of the right the opportunity to inspect the goods stored under customs control.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(7) In order to ensure the inviolability and preservation of suspected goods, the customs authorities have the right to affix a customs seal to the goods or to demand that the goods be transported to a place determined by the customs authorities.

(8) If the proprietor of a right, when giving an opinion on suspected goods, finds that the goods do not infringe intellectual property rights, the goods shall be released from customs control.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### **§ 11. Giving opinion on suspected goods ➡**

(1) The proprietor of a right shall give an opinion on suspected goods in writing within ten working days as of the date following the date on which the proprietor of the right is notified of the potential infringement. If the provisions of § 9 of this Act have been previously applied, the proprietor of the right shall give an opinion on the goods in writing within ten working days as of the date following the date on which the application of the proprietor of the right is satisfied.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) If the proprietor of a right has not given an opinion within the specified term, the customs authorities may extend the term once for ten working days on the basis of a reasoned application by the proprietor of the right.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) An opinion shall set out:

- 1) the time and place of giving the opinion on the goods;
- 2) the given name, surname and position of the person giving the opinion on the goods;
- 3) a description of the samples on which the opinion is given;

4) a conclusion containing the reasoned opinion of the proprietor of the right as to whether the goods infringe intellectual property rights or not.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) The proprietor of a right shall not be remunerated for giving an opinion on suspected goods.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(5) The procedure for giving an opinion on suspected goods shall be established by the Government of the Republic.

### **§ 12. Rights of person involved ➡**

(1) A person involved may file a challenge pursuant to the procedure provided for in the Customs Code (RT I 2001, 88, 531; 2002, 61, 375; 63, 387; 92, 528; 2003, 2, 17) concerning a decision to suspend the release of goods or to store goods under customs control.

(11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134)

(2) The customs authorities shall immediately send a copy of an opinion received from the proprietor of a right to the persons involved, who may submit written objections concerning the opinion, together with corresponding proof, to the customs authorities within ten days as of receipt of the copy of the opinion.

(11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134)

(3) In the event of a dispute between the proprietor of a right and a person involved concerning the corresponding right, the interested party may have recourse to a court for the resolution of the dispute.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### **§ 13. Commencement of proceedings ➡**

If, according to the opinion of the proprietor of a right, suspected goods infringe intellectual property rights, the customs authorities shall commence misdemeanour proceedings or criminal proceedings with regard to the person who imported or exported the goods.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

### **§ 14. Detention of suspected goods ➡**

(1) In the event that proceedings concerning violation of the customs rules are initiated, the customs authorities shall detain the suspected goods until the proceedings are terminated or the decision made in the proceedings is executed.

(2) Detained goods shall be stored in the possession of the customs authorities or in a customs warehouse or customs terminal. The inviolability and preservation of the goods shall be ensured.

### **§ 15. Compensation of customs authorities for expenses relating to storage and transportation of goods ➡**

(1) Compensation for expenses relating to the storage and transportation of goods infringing intellectual property rights shall be paid to the customs authorities by the offender.

(2) If goods stored under customs control or detained do not infringe intellectual property rights, compensation for expenses relating to the storage and transportation of the goods shall be paid to the customs authorities by the proprietor of the right if the action or inaction thereof caused the goods to be unduly detained or stored under customs control.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### **§ 16. Measures applicable to goods infringing intellectual property rights ➡**

(1) Goods infringing intellectual property rights shall be confiscated and destroyed.

(11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134)

(11) Confiscated counterfeit clothing and footwear from which unlawful markings have been removed may be transferred, with the written permission of the proprietor of the rights, to state or local government health care or social welfare institutions. The procedure for the transfer of confiscated counterfeit clothing and footwear to state or local government health care or social welfare institutions shall be established by the Minister of Finance.

(11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134)

(2) After the entry into force of a judgment in a misdemeanour matter or a criminal matter or of a ruling on the termination of proceedings or on confiscation, the customs authorities shall, at the request of the proprietor of the rights, communicate to the proprietor of the rights all information available concerning the manufacturer of the goods infringing intellectual property rights, the consignor in the case of importation of the goods, the consignee in the case of exportation of the goods, and the quantity of the goods, in addition to the information specified in subsection 10 (5) of this Act.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336; 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387; 11.02.2003 entered into force 17.03.2003 - RT I 2003, 23, 134)

### **§ 17. Entry into force of Act ➡**

This Act enters into force on 1 September 2001.

1 RT = Riigi Teataja = State Gazette