

pPursuant to Article 75 paragraphs 1 and 2 of the Constitution of the Republic of Macedonia, the President of the Republic of Macedonia and the President of the Assembly of the Republic of Macedonia issue this

DECREE
FOR PROMULGATION OF
THE LAW ON CUSTOMS MEASURES FOR PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS

The Law on Customs Measures for Protection of Intellectual Property Rights, adopted by the Assembly of the Republic of Macedonia on its session held on 26 May 2015, is hereby promulgated.

No. 08-2284/1
26 May 2015
Skopje

The President
of the Republic of Macedonia,
Gjorjge Ivanov, PhD,

The President
of the Assembly of
the Republic of Macedonia,
Trajko Veljanoski,

LAW ON CUSTOMS MEASURES FOR PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

(1) This Law shall regulate the conditions and procedures for taking actions by customs authority when goods are reasonably suspected of infringing an intellectual property right, they are or should be subject to customs supervision or customs control in the customs area of the Republic of Macedonia according to customs regulations in the situations when the goods:

- a) are declared for release for free circulation, export or re-export;
- b) are entering or leaving the customs area of the Republic of Macedonia or when they are placed under a transit procedure;
- c) are placed under customs warehousing procedure, inward-processing procedure, processing under customs supervision or temporary import, or placed in a free zone or free warehouse in accordance with customs rules.

Article 2

Enforcement

(1) This Law shall not apply to goods that have been released for free circulation intended for end use.

(2) This Law shall not apply to goods of noncommercial nature that are part of the personal baggage of travellers.

(3) This Law shall not apply to goods which have been manufactured with the consent of the right holder or to goods which have been manufactured by a person authorised by the right holder to manufacture a certain quantity of goods over the agreed amount between that person and the right holder.

(4) The provisions of this Law shall be without prejudice to the rules governing the protection of industrial property rights, the copyright and other related rights, or the rules relating to criminal proceedings.

Article 3

Subsidiary application

If not otherwise provided by this Law, the customs authority conducting the procedure for protection of intellectual property rights shall apply the Law on General Administrative Procedure.

Article 4

Definitions

For the purposes of this Law:

(1) “intellectual property right“ shall be:

- a) trade mark, according to the Law on Industrial Property, as well as international agreements ratified in the Republic of Macedonia;
- b) design, according to the Law on Industrial Property, as well as international agreements ratified in the Republic of Macedonia;
- c) copyright or other related right, according to the Law on Copyright and Related Rights;
- d) geographical indication, according to the Law on Industrial Property;
- e) patent, according to the Law on Industrial Property;
- f) supplementary protection certificate of medical products, according to the Law on Industrial Property;
- g) supplementary protection certificate of plant protection products, according to the Law on Plant Protection Products;
- h) plant variety rights (plant breeders' rights), according to the Law on Seed and Plant Propagating Material for agricultural plants;
- i) topographies of integrated circuits, according to the Law on Protection of Topography of Integrated Circuits;

(2) “geographical indication“ shall be:

- a) a protected geographical indication or designation of origin of agricultural products and foodstuff, according to the Law on Quality of Agricultural Products;
- b) a designation of origin or geographical indication for wine, according to the Law on wine;
- c) a geographical designation for aromatised drinks based on wine, according to the Law on wine;

- d) a geographical indication as provided for in international agreements ratified in the Republic of Macedonia.
- (3) “counterfeit goods” shall be:
- a) goods which are the subject of an act of infringement of a right of a trade mark, that bear, without authorisation, a sign which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trade mark;
 - b) goods which are the subject of an act of infringement of a right of a geographical indications where they bear or are described by a name or term protected in respect of that geographical indications;
 - c) form of the goods or packaging, label, sticker, brochure, operating instructions, warranty document or other similar item, even if presented separately, which is the subject of an act infringing a right of a trademark or a geographical indication, which includes a sign (including also: logo, words, letters, numbers, images, drawings, combinations of colors, three-dimensional shapes and combinations thereof), name or term which is identical to a validly registered trademark or protected geographical indication, or which cannot be distinguished in its essential aspects from such a geographical indication, and which can be used for the same type of goods as that for which the trademark or geographical indication has been registered.
- (4) “pirated goods” shall be goods which are the subject of an act infringing a copyright or related right or a right of a design and that is made or contain copies made without the consent of the holder of a copyright or related right or a design, or of a person authorised by that right holder in the country of production;
- (5) “goods suspected of infringing an intellectual property right” shall be goods with regard to which there are reasonable indications that:
- a) are the subject of an act infringing the intellectual property right;
 - b) present devices, products or components which are primarily designed, produced or adapted for the purpose of avoiding the circumvention of any technology, device or component that, in the normal course of its operation, prevents or restricts acts in respect of works which are not authorised by the holder of any copyright or any related right and which relate to an act infringing those rights;
 - c) present any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right, if such moulds or matrices relate to an act infringing the intellectual property right;
- (6) “right holder” shall be:
- a) any domestic or foreign, legal and natural person which is, in accordance with the law, a holder of a patent right, industrial design right, trademark, designation of origin, geographical indication, copyright or related right, or
 - b) any other domestic or foreign, legal and natural person authorised to use any of the intellectual property rights mentioned in point (a) of this paragraph, or a representative of the right holder or of the person authorised to use any of the intellectual property rights.
- (7) “application for customs action” shall be an application submitted to the competent

organisational unit requesting the customs authority to take action against the goods suspected to infringe the intellectual property right.

- (8) “applicant” shall be the person or entity in whose name an application is submitted.
- (9) “holder of the goods” shall be the person who is the owner of the goods or who has a similar right of disposal, or physical control over such goods suspected of infringing an intellectual property right;
- (10) “declarant” shall be a person pursuant to the Customs Code.
- (11) “destruction” shall be the physical destruction, recycling or disposal of goods outside the free circulation, in such a way as to preclude damage to the right holder.
- (12) “customs territory of the Republic of Macedonia” shall be the territory pursuant to the Customs Code.
- (13) “release of the goods” shall be the release of the goods pursuant to the Customs Code.
- (14) “small consignment” shall be a postal or express courier consignment, which:
 - a) contains three units or less; or
 - b) has a gross weight of less than two kilograms.

For the purpose of point (a) from this paragraph, “unit” shall be goods as classified under the Combined Nomenclature in accordance with the Law on Customs Tariff if unpackaged, or the package of such goods are intended for retail sale to the end consumer.

For the purpose of this definition, separate goods falling within the scope of the Law on Customs Tariff shall be considered as different units and goods presented as sets classified in one heading from the Customs Tariff shall be considered as one unit;

- (15) “perishable goods” shall be goods considered by customs authorities to deteriorate by being kept for up to 20 days from the date of their suspension of release or detention;
- (16) “exclusive licence” shall be a licence (whether general or limited) authorising the licensee to exclude all other persons, including the person granting the licence, to use an intellectual property right in the manner authorised by the licence.
- (17) “competent organisational unit” shall be the organisational unit of the Customs Administration determined for receiving and processing the applications for taking customs action to protect intellectual property rights.

CHAPTER II

APPLICATIONS FOR CUSTOMS ACTION

SECTION 1

Submission of applications for customs actions

Article 5

Entitlement to submit an application

The following persons and entities have the right to submit an application for customs action to implement the protection of intellectual property rights:

- 1) Right holders;
- 2) Persons or entities authorised to use intellectual property rights, or representatives which have been authorised by the right holder to initiate proceedings in order to determine

whether the intellectual property right has been infringed;

3) Groups of producers governing geographical indications representing producers of products with geographical indications or representatives of such groups and business entities entitled to use a geographical indication, as well as competent authorities or authorities competent for such a geographical indication pursuant to the Law.

Article 6

Declaration at the time of submission of applications for customs actions

(1) In order to take action under Article 5 of this Law, the applicant is obliged in the application for customs action to make a declaration under paragraph (2) of this Article and give a proof that the applicant is the right holder for the goods in question.

(2) With the declaration referred to in paragraph (1) from this Article, the right holder or the authorised person shall take upon himself the liability towards the persons involved in one of the situations referred to in Article 1 paragraph (1) of this Law, where the procedure initiated in accordance with Article 19 of this Law is discontinued owing to an act or omission by the right holder or in the event that the goods in question are subsequently found not to be goods infringing an intellectual property right. With the declaration, the right holder or the authorised person, also agrees to settle damage in accordance with Article 32 as well as to bear all costs incurred in accordance with Article 33 of this Law.

Article 7

Submission of applications for customs actions

(1) The Customs Administration determines competent organisational unit responsible for receiving and processing applications for taking customs actions.

(2) The applications for customs actions shall be submitted to the competent organisational unit. The applications shall be completed and shall contain the information and data in accordance with Article 8 of this Law.

(3) Where an application for customs action is submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 20 paragraph (5) of this Law, it shall:

- 1) be submitted to the competent organisational unit within four working days from the notification of the suspension of the release or detention of the goods;
- 2) contain the required documentation referred to in Article 8 paragraph (2) of this Law.

(4) The applications for customs actions may be submitted electronically using data-processing techniques by a computerised systems developed and maintained by the Customs Administration.

Article 8

Application for customs actions

(1) The application referred to in Article 5 of this Law must contain all the information and data needed to enable the goods in question to be readily recognised by the customs authorities.

(2) The application for action must be submitted together with a required documentation regarding the identification of the goods, as well as a proof that the applicant holds the right to submit an application.

(3) The form and contents of the application for customs action, as well as the required documentation shall be prescribed by the Minister of Finance.

SECTION 2

Acting upon submitted applications for customs actions

Article 9

Processing of incomplete applications

(1) Where, on receipt of the application referred to in Article 5 of this Law, the competent organisational unit considers that the application does not contain all the necessary information, data and documentation in accordance with Article 8, paragraphs (1) and (2) of this Law, it shall request the applicant to submit them within 10 working days from the notification of the application, whereupon the period referred to in Article 11 paragraph (1) of this Law shall be suspended until they obtain the necessary information, data and documentation.

(2) Where the applicant does not provide the information, data and documentation required within the period referred to in paragraph (1) of this Article, or if they are incomplete, the Customs Administration may decide with a conclusion to reject the application for action and in that event it shall provide reasons for this conclusion.

(3) A special appeal against the conclusion may be lodged by the applicant to the Minister for Finance within eight days from the date of submitting.

Article 10

Fees

The applicant shall not be charged a fee for the processing of the application for customs actions.

Article 11

Notification of decisions granting or rejecting applications for customs action

(1) The competent organisational unit shall notify the applicant of its decision granting or rejecting the applications for customs actions by the Customs Administration within 30 working days of the receipt of the application.

(2) In the event of rejection, the Customs Administration with a conclusion shall provide reasons for its decision and include information on the appeal procedure.

(3) If the applicant has been notified of the suspension of the release or the detention of the goods by the customs authorities before the submission of an application, the competent organisational unit shall notify the applicant of its decision granting or rejecting the application within two working days of the receipt of the application.

Article 12

Granting or rejecting applications for customs actions

(1) The granting or rejecting the application for customs action, the extension of the period during which customs authority is to take action, as well as any decision revoking or amending the application shall be adopted by the Customs Administration.

(2) If the Customs Administration does not approve the application referred to in Article 5 of this Law or does not adopt a decision to refuse the application within the period referred to in Article 11 paragraph (1) of this Law, the applicant has the right to submit an application

for exercising his right within three working days to the archive office of the Customs Administration Director.

(3) The form and contents of the application form referred to in paragraph (2) of this Article, shall be prescribed by the Minister of Finance.

(4) The Customs Administration Director shall, within five working days of the day of submission of the application referred to in paragraph (2) of this Article to the archive office of the Customs Administration Director to adopt an act which approves or rejects the application for customs action. If the Customs Administration Director has no archive office, the application is submitted to the archive office of the main office of the Customs Administration.

(5) A copy of the application referred to in Article 5 of this Law shall be attached to the application referred to in paragraph (2) of this Article by the applicant.

(6) If the Customs Administration Director does not act upon the application within the period prescribed in paragraph (4) of this Article, the applicant may inform the State Administrative Inspectorate within five working days.

(7) The State Administrative Inspectorate is obliged, within ten days of the day of receipt of the notification under paragraph (6) of this Article to inspect the Customs Administration if the procedure is conducted in accordance with the law and within three working days of the day on which the inspection was carried out to inform the applicant of the measures taken.

(8) The inspector from the State Administrative Inspectorate referred to in paragraph (7) of this Article, after the conducted inspection shall adopt a decision, according to the law, obliging the Customs Administration Director within ten days to decide upon the submitted application or to approve or reject the application and to notify the inspector of the adopted act. A copy of the act by which is decided upon the application is attached to the notification.

(9) If the Customs Administration Director does not decide within the period established in paragraph (8) of this Article, the inspector shall submit a request for initiating misdemeanour procedure for an offense stipulated in the Law on Administrative Inspection and shall establish an additional period of five working days in which the Customs Administration Director shall decide upon application submitted and, at the same time, shall notify the inspector of the adopted act. A copy of the act by which is decided upon the application is attached to the notification. The inspector shall inform the applicant of the measures taken within a period of three working days.

(10) If the Customs Administration Director does not decide even in the additional period referred to in paragraph (9) of this Article, the inspector shall submit a report to the competent public prosecutor within a period of three working days and in the same period shall inform the applicant of the measures taken

(11) If the inspector does not act upon the notification referred to in paragraph (7) of this Article, the applicant has the right to file a complaint to the archive office of the State Administrative Inspectorate within five working days. If the Director has no archive office, the application is submitted to the archive office of the main office of the State Administrative Inspectorate.

(12) The Director of the State Administrative Inspectorate is obliged to review the complaint under paragraph (11) of this Article within three working days and if he determines that the inspector did not act upon the notification of the applicant referred to in paragraphs (7) and (8) and/or has not filed a report pursuant to paragraphs (9) and (10) of this Article, the Director of the State Administrative Inspectorate shall file an application for initiating

misdemeanour procedure for an offense stipulated in the Law on Administrative Inspection for the inspector and shall establish an additional period of five working days in which the inspector will supervise the Customs Administration if the procedure is conducted in accordance with the law and shall inform the applicant of the measures taken within three working days of the day on which the inspection was carried out.

(13) If the inspector does not act upon in the additional period referred to in paragraph (12) of this Article, the Director of the State Administrative Inspectorate shall submit a report to the competent public prosecutor against the inspector and shall inform the applicant of the measures taken within a period of three working days.

(14) In the case of paragraph (13) of this Article, the State Administrative Inspectorate immediately, and no later than one working day, will authorise another inspector to conduct the inspection immediately.

(15) In the case of paragraph (14) of this Article, the Director of the State Administration Inspectorate within a period of three working days shall inform the applicant of the measures taken.

(16) If the Director of the State Administrative Inspectorate does not act according to paragraph (12) of this Article, the applicant may file a report to the competent public prosecutor within eight working days.

(17) If the Customs Administration Director does not decide within the period established in paragraph (10) of this Article, the applicant may initiate an administrative dispute before the competent court.

(18) The proceeding before the Administrative Court is urgent.

Article 13

Period during which the customs authority is to take customs actions

(1) When granting an application, the Customs Administration shall specify the period during which the customs authority is to take action.

(2) The period referred to in paragraph (1) of this Article shall begin pursuant to Article 11 paragraph (1) of this Law, and shall not exceed one year from the date of granting the application.

(3) Where an application for customs actions submitted after notification by the customs authorities of the suspension of the release or detention of the goods in accordance with Article 20 paragraph (5) of this Law, does not contain the necessary information, data and documentation in accordance with paragraphs (1) and (2) of Article 8 of this Law, it shall be granted if they are provided within 10 working days after the notification of the suspension of the release or detention of the goods.

(4) Where an intellectual property right ceases to have effect or where the applicant's right to submit an application became void for other reasons, no action shall be taken by the customs authorities.

Article 14

Extension of the period during which the customs authority is to take customs action

(1) The extension of the period for customs action is based on an application submitted under Articles 6, 7 and 8 paragraphs (1) and (2) of this Law.

(2) The applicant requiring extension of the period for customs actions may be the

entities referred to in Article 5 of this Law.

(3) The Customs Administration at the request of the applicant, may extend the period for taking action if the debts occurring or are likely to occur in the Customs Administration are previously discharged or provided.

(4) Where the application for extension of the period for which the customs authority should take action is submitted to the competent organisational unit within 30 working days before the deadline when a request for an extension can be made, the Customs Administration may reject the application.

(5) The competent organisational unit shall notify the applicant on its decision on the extension of the period for which the customs authority should take customs actions, within 30 working days of the receipt of the application referred to in paragraph (1) of this Article. The period during which the customs authority is to take customs action is to be established by the Customs Administration.

(6) The extended period in the application requiring extension of the period during which the customs authorities are to take action shall start from the day following the date of expiry of the previous period and shall not exceed one year.

(7) Where an intellectual property right ceases to have effect or where the applicant ceases for other reasons to be entitled to submit an application, no action shall be taken by the customs authorities.

(8) The applicant shall not be charged a fee for processing of the application requiring extension of the period during which the customs authority is to take action.

(9) The form and contents of the application requiring extension of the period for customs action, shall be prescribed by the Minister of Finance.

Article 15

Amending the adopted application with regard to intellectual property rights

(1) The Customs Administration may, at the request of the applicant, modify the intellectual property rights covered in that application.

(2) Where a new intellectual property right is added, the application shall contain the information and data prescribed by a bylaw adopted by the Minister of Finance in accordance with Article 8 paragraph (3) of this Law.

Article 16

Notification obligations of the competent organisational unit

(1) The competent organisational unit to which an application has been submitted shall immediately notify the other customs organisational units on:

- a) acceptance of the application;
- b) revoking the accepted application;
- c) amending the accepted application;
- c) extending the period during which the customs authority is to take action.

(2) The competent organisational unit shall immediately notify the other organisational units about the termination of customs actions in accordance with Article 18 of this Law.

Article 17

Notification obligations of the right holder

The right holder shall immediately notify the competent organisational unit of any of the following:

- (a) an intellectual property right covered by the application ceases to have effect;
- (b) the right holder ceases for other reasons to be entitled to submit the application;
- (c) when modifying the information, data and documents referred to in Article 8 of this Law.

Article 18

Failure of the right holder to fulfil his obligations

- (1) Where the right holder uses the information provided by the customs authority for purposes other than those provided for in Article 24 of this Law, or misuse them, the Customs Administration will not act upon the application accepted and would refuse to extend the period during which the customs authority is to take action.
- (2) The Customs Administration will not act upon the accepted application for customs action until the expiry of the period of its validity, where the right holder:
 - (a) does not fulfil the notification obligations set out in Article 17 of this Law;
 - (b) does not fulfil the obligation on returning samples set out in Article 22 paragraph (3) of this Law;
 - (c) does not fulfil the obligations on costs set out in Article 33 of this Law;
 - (d) without valid reason does not initiate proceedings in accordance with Article 26 paragraph (5) or Article 29 paragraph (9) of this Law.

CHAPTER III

ACTION BY THE CUSTOMS AUTHORITY

SECTION 1

Suspension of the release or detention of goods suspected of infringing an intellectual property right

Article 19

Suspension of the release or detention of the goods following the grant of an application

- (1) Where the customs authority identifies goods suspected of infringing an intellectual property right covered by a decision granting an application for customs action, they shall suspend the release of the goods or detain them.
- (2) Before suspending the release of or detaining the goods, the customs authority may ask the right holder to provide them with any relevant information with respect to the goods.
- (3) The customs authority may provide the right holder with information about the actual or estimated quantity of goods, the nature of goods as well as images of the goods.
- (4) The customs authority shall notify the declarant or the holder of the goods of the suspension of the release of the goods or the detention of the goods within one working day of that suspension or detention.
- (5) Where the customs authority opts to notify the holder of the goods and two or more

persons are considered to be the holder of the goods, the customs authority shall not be obliged to notify more than one of those persons.

(6) The customs authority shall notify the right holder of the suspension of the release of the goods or the detention immediately after the declarant or the holder of the goods is notified.

(7) The customs authority shall inform the right holder, the declarant or the holder of the goods of the actual quantity, the nature of the goods, including available pictures thereof.

(8) The notifications referred to in paragraphs (4), (5) and (6) of this Article shall include information on the procedure set out in Article 26 of this Law.

(9) The customs authority shall, upon request and where available, inform the right holder of the names and addresses of the consignors and consignees/name and main office of the consignor or the consignee, the declarant or the holder of the goods, of the customs procedure, the origin and destination of the goods whose release has been suspended or which have been detained.

Article 20

Suspension of the release or detention of the goods before the acceptance of an application ('ex officio')

(1) Where the customs authority identifies goods suspected of infringing an intellectual property right, which are not covered by an accepted application, they may, except in the case of perishable goods, suspend the release of those goods or detain them.

(2) Before suspending the release of or detaining the goods suspected of infringing an intellectual property right, the customs authority may, without disclosing any information other than the actual or estimated quantity of goods, the nature of goods and images thereof, request any person or entity potentially entitled to submit an application concerning the alleged infringement of the intellectual property rights to provide them with any relevant information.

(3) The customs authority shall notify the declarant or the holder of the goods of the suspension of the release of the goods or the detention of the goods within one working day of that suspension or detention.

(4) Where the customs authority opts to notify the holder of the goods and two or more persons are considered to be the holder of the goods, the customs authority shall not be obliged to notify more than one of those persons.

(5) The customs authority shall notify persons or entities entitled to submit an application for customs action concerning the alleged infringement of the intellectual property rights, of the suspension of the release of the goods or their detention promptly after the declarant or the holder of the goods is notified.

(6) The customs authority may consult the competent authorities in order to identify the persons or entities entitled to submit an application for customs actions.

(7) The notifications referred to in paragraphs (3), (4) and (5) of this Article shall include information on the procedure set out in Article 26 of this Law.

(8) The customs authority shall approve the release of the goods or shall stop their detention after completion of all customs formalities in the following cases:

(a) where he/she has not identified any person or entity entitled to submit an application for customs actions concerning alleged infringement of intellectual

property rights within one working day from the the suspension of the release or detention of the goods;

(b) where an application in accordance with Article 7 paragraph (3) of this Law is not submitted, or where the submitted application is rejected.

(9) Where an application has been accepted, the customs authority shall, upon request and when possessing such information, inform the right holder about the names and addresses of the consignors and consignees/name and main office of the consignor or the consignee, the declarant or the holder of the goods, of the customs procedure, the origin and destination of the goods whose release has been suspended or which have been detained.

Article 21

Risk analysis in the course of performing customs control

For goods subject to customs supervision or customs control, without prejudice to Articles 19 and 20 of this Law, the customs authorities carry out the appropriate customs control and take appropriate measures to identify it, as provided for in the Customs Code in line with the criteria for risk analysis, in order to prevent activities that infringe intellectual property rights as well as cooperation with other countries in the implementation of the protection of intellectual property rights.

Article 22

Inspection and sampling of goods whose release has been suspended or which have been detained

(1) The customs authority shall give the right holder and the declarant, the holder of the goods or the person who is the owner of the goods the opportunity to inspect the goods whose release has been suspended or which have been detained.

(2) At the right holder's request, the customs authority may take or provide samples that are representative of the goods in order to send such samples to the right holder, strictly for the purposes of analysis and to facilitate the subsequent procedure in relation to counterfeit and pirated goods. Any analysis of those samples shall be carried out under the sole responsibility of the right holder.

(3) The right holder shall, unless circumstances do not allow, return the samples referred to in paragraph (2) of this Article to the customs authorities after completing the analysis, at the latest before the goods are released or their detention is ended.

Article 23

Conditions for storage

(1) Storage of the goods during the period of suspension of release or detention shall be carried out in a manner which is in accordance with the provisions of the customs rules governing the temporary storage of goods.

(2) The costs for storage and maintenance of the goods shall be borne by the person submitting the application for customs action.

Article 24

Permitted use of certain information by the right holder

Where the right holder has received the information referred to in Article 19 paragraphs (7) and (9), Article 20 paragraph (9), Article 22 or Article 29 paragraph (8) of this Law, he may use that information only for the following purposes:

- (a) to initiate proceedings to determine whether an intellectual property right has been infringed and in the course of conducting such proceedings;
- (b) in relation to criminal investigations related to the infringement of an intellectual property right and undertaken by competent authorities in the Republic of Macedonia where the goods are found;
- (c) to initiate and to conduct criminal proceeding;
- (d) to seek compensation from the perpetrator or other persons;
- (e) to negotiate with the declarant or the holder of the goods in view of destroying the goods in accordance with Article 26 of this Law;
- (f) to negotiate with the declarant or the holder of the goods of the amount of the guarantee referred to in Article 27 paragraph (2) point (a) of this Law.

Article 25

International sharing of information and data between other customs authorities in order to detect goods that infringe intellectual property right

(1) Without prejudice to provisions on personal data protection and for the purpose of eliminating international trade in goods infringing intellectual property rights, the Customs Administration may share certain data and information available to them with the authorities in charge in other countries.

(2) The data and information referred to in paragraph (1) of this Article shall be exchanged in view of swift and efficient action of the customs authority to detect goods that infringe intellectual property right. Such data and information may relate to information on seizures, trends and general information on risk analysis, including on goods which are in transit through the territory of the Republic of Macedonia. Such data and information may include the following:

- 1) nature and quantity of goods;
- 2) suspected intellectual property right infringed;
- 3) origin, provenance and destination of the goods;
- 4) information on movements of means of transport, in particular:
 - (a) name of vessel or registration of means of transport;
 - (b) reference numbers of freight bill or other transport document;
 - (a) number of container;
 - (d) weight of load;
 - (e) description and/or coding of goods;
 - (f) reservation number;
 - (g) seal number;
 - (h) place of first loading;
 - (i) place of final unloading;
 - (j) places of transshipment;
 - (k) expected date of arrival at place of final unloading.

- 5) information on movements of containers, in particular:
- (a) number of container;
 - (b) container loading status;
 - (c) date of movement;
 - (d) type of transport (loaded, unloaded, transhipped, entered, left, etc.);
 - (e) name of vessel or registration of means of transport;
 - (f) number of voyage/shipment;
 - (g) place;
 - (h) freight bill or other transport document.

SECTION 2

Destruction of goods, initiation of proceedings, early release of goods and free handing over of the goods

Article 26

Destruction of goods and initiation of proceedings

- (1) The right holder within ten working days of the receipt of notification of suspension of release or detention of the goods under Article 19 paragraph (6) and Article 20 paragraph (9) of this Law, shall be bound to inform the customs authority if the goods have infringed the intellectual property right.
- (2) Goods suspected of infringing an intellectual property right may be destroyed under customs control, without there being any need to determine whether an intellectual property right has been infringed under the law, where all of the following conditions are fulfilled:
- (a) the right holder has confirmed in writing to the customs authorities that an intellectual property right has been infringed, within 10 working days, or three working days in the case of perishable goods, of notification of the suspension of the release or the detention of the goods;
 - (b) the right holder has confirmed in writing to the customs authority his agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of notification of the suspension of the release or the detention of the goods; and
 - (c) the declarant, the holder of the goods or the person who is the owner of the goods has confirmed in writing to the customs authority his agreement to the destruction of the goods within 10 working days, or three working days in the case of perishable goods, of notification of the suspension of the release or the detention of the goods. Where the declarant or the holder of the goods has not confirmed his agreement to the destruction of the goods nor notified his opposition thereto to the customs authority, within those deadlines, the customs authority may deem the declarant or the holder of the goods to have confirmed his agreement to the destruction of those goods.
- (3) The destruction of the goods shall be carried out under customs control and under the responsibility of the right holder. Samples may be taken by competent authority prior to the destruction of the goods and they may be used for educational purposes.

(4) The customs authority shall grant the release of the goods or put an end to their detention, immediately after completion of all customs formalities, if within the deadlines set out in paragraph (2) points (a) and (b) of this Article shall not obtain confirmation in writing from the right holder that an intellectual property right has been infringed, nor his agreement to destruction, unless the customs authority has been duly notified of the initiation of proceedings before a competent court or other authority to determine infringement of intellectual property right.

(5) Where the declarant, the holder of the goods or the person who is the owner of the goods has confirmed in writing to the customs authority that retained the goods, his disagreement to the destruction of the goods, in accordance with the deadlines referred to in paragraph (2), point (c) of this Article, the customs authorities shall immediately notify the right holder thereof. The right holder shall, within 10 working days, or three working days in the case of perishable goods, of notification of the suspension of the release or the detention of the goods, initiate proceedings before a competent court to determine whether an intellectual property right has been infringed.

(6) Except in the case of perishable goods the customs authorities may extend the period referred to in paragraph (5) of this Article by a maximum of 10 working days upon a request by the right holder in appropriate cases.

(7) The customs authority shall grant the release of the goods or put an end to their detention, immediately after completion of all customs formalities, where, within the periods referred to in paragraphs (5) and (6) of this Article, it has not been duly informed, in accordance with paragraph (5) of this Article, on the initiation of proceedings to determine whether an intellectual property right has been infringed.

(8) The customs authority shall grant the release of the goods or put an end to their detention where the right holder shall notify that the goods do not infringe intellectual property right or where it does not have registered intellectual property right, provided that all customs formalities are completed.

Article 27

Early release of goods

(1) Where the customs authorities have been notified of the initiation of proceedings before a competent court to determine whether a design, patent, utility model, topography of semiconductor product or plant variety has been infringed, the declarant or the holder of the goods may request the customs authorities to release the goods or put an end to their detention before the completion of those proceedings.

(2) The customs authorities shall release the goods or put an end to their detention only where all the following conditions are fulfilled:

- (a) the declarant or the holder of the goods has provided a guarantee that is of an amount sufficient to protect the interests of the right holder;
- (b) the competent court has not made a decision because of an infringement of intellectual property right;
- (c) all customs formalities have been completed.

(3) The provision of the guarantees referred to in point (a) of paragraph (2) of this Article shall not affect the other legal remedies available to the right holder.

Article 28

Goods for destruction

(1) Goods found to infringe an intellectual property right shall be destroyed in accordance with Articles 26 and 29 of this Law and shall not be:

- (a) released for free circulation, unless customs authorities, with the agreement of the right holder, decide that it is necessary in the event that the goods are to be disposed of or recycled outside of free circulation, including for awareness-raising, training and educational purposes.
- (b) brought out of the customs territory of the Republic of Macedonia;
- (c) exported;
- (d) re-exported;
- (e) placed under a suspensive procedure;
- (f) placed in a free zone or free warehouse.

(2) The customs authority may allow the goods referred to in paragraph (1) of this Article to be moved under customs supervision between different places within the customs territory of the Republic of Macedonia with a view to their destruction under customs control.

Article 29

Procedure for the destruction of small consignments

(1) The procedure for destruction of small consignments shall apply where the following conditions are fulfilled:

- (a) the goods are suspected of being counterfeit or pirated goods;
- (b) the goods are not perishable;
- (c) the goods are covered by a decision granting an application for customs action;
- (d) the applicant has requested the use of the procedure for the destruction of small consignment;
- (e) the goods are transported as small consignments.

(2) When the procedure for the destruction of small consignments is applied, the provisions of Article 19, paragraphs (3), (4), (5), (6), (7), (8) and (9) and Article 22, paragraphs (2) and (3) of this Law do not apply.

(3) The customs authority shall notify the declarant or the holder of the goods of the suspension of the release of the goods or the detention of the goods within one working day of the day of suspension or detention of the goods. The notification of the suspension of the release or the detention of the goods shall include the following information:

- (a) that the customs authorities intend to destroy the goods;
- (b) the rights of the declarant, the holder or the person who is the owner of the goods under paragraphs (4), (5) and (6) of this Article.

(4) The declarant, the holder or the person who is the owner of the goods shall be given the opportunity to express his point of view within 10 working days of notification of the suspension of the release or the detention of the goods.

(5) The goods concerned may be destroyed where, within 10 working days of notification of the suspension of the release or the detention of the goods, the declarant, the holder or the

person who is the owner of the goods has confirmed to the customs authority his agreement to the destruction of the goods.

(6) Where the declarant, the holder or the person who is the owner of the goods has not confirmed his agreement to the destruction of the goods nor notified his opposition thereto to the customs authorities, within the period referred to in paragraph (5) of this Article, the customs authority may deem the declarant, the holder of the goods or the person who is owner of the goods to have confirmed his agreement to the destruction of the goods.

(7) The destruction shall be carried out under customs control. The customs authority shall, upon request of the right holder and as appropriate, provide him with information about the actual or estimated quantity of destroyed goods and their nature.

(8) Where the declarant, the holder of the goods or the person who is the owner of the goods has confirmed in writing to the customs authority that retained the goods, his disagreement to the destruction of the goods, in accordance with the deadlines referred to in paragraph (6) of this Article, the customs authorities shall immediately notify the right holder thereof and of the quantity of goods and their nature, including images thereof, where appropriate. The customs authority shall, upon request and where available to them, inform the right holder of the names and addresses of the consignee, the consignors and the declarant or the holder of the goods, of the customs procedure and of the origin, provenance and destination of the goods whose release has been suspended or which have been detained.

(9) The customs authority shall grant the release of the goods or put an end to their detention immediately after completion of all customs formalities where they have not received information from the right holder on the initiation of proceedings before competent court or other authority to determine whether an intellectual property right has been infringed within 10 working days of the notification referred to in paragraph (8) of this Article.

Article 30

Free handing over of the confiscated goods that infringe intellectual property right

(1) Notwithstanding Article 26 of this Law, the Government of the Republic of Macedonia may adopt a decision the goods that are found to infringe intellectual property right to be handed over free of charge to the state authority, in cases of mitigating the consequences of natural disasters, as well as to the social welfare beneficiaries and to families whose total monthly income does not exceed 1.5 minimum wage, established for the last year.

(2) The goods referred to in paragraph (1) of this Article are textiles and footwear which are classified in Chapters 61, 62 and 64 of the customs nomenclature of the Law on Customs Tariffs.

(3) The decision referred to in paragraph (1) of this Article is adopted by the Government of the Republic of Macedonia, on a proposal of the Customs Administration, if the conditions of Article 247, paragraph (1) point (c) of the Customs Code are met and if it has a certificate from the competent authority that the goods are without prejudice to the regulations on product safety.

(4) The state authority referred to in paragraph (1) of this Article shall be bound, before taking over the goods, to cover all expenses related to the storage of seized goods, and the costs of removal under customs supervision of the characteristics of the trademark whose right is found to be infringed.

(5) The customs authority, in cooperation with the state authority referred to in paragraph

(1) of this Article and the right holder, confirms in writing that any characteristics of the goods and items whose right was proved to be infringed are removed before the goods are delivered.

(6) The state authority referred to in paragraph (1) of this Article shall submit a report to the Government of the Republic of Macedonia within 15 days of the distribution of the goods of this Article.

(7) The holder of an intellectual property right is not subject to an obligation to determine the recipients of the goods subject to a free handing over.

(8) The way of distribution of goods by a state authority referred to in paragraph (1) of this Article, as well as the form of the report referred to in paragraph (6) of this Article, is prescribed by the Government of the Republic of Macedonia on a proposal of the Minister for Finance.

CHAPTER IV

LIABILITY AND COSTS

Article 31

Liability of the customs authority

(1) The acceptance of an application shall not entitle the right holder to compensation in the event that goods infringing an intellectual property right are not detected by a customs authority and are released or no action is taken to detain them.

(2) The carrying out of the powers and actions taken by the customs authority in accordance with this Law shall not render it liable for compensation towards the persons involved in the situations referred to in Article 1 paragraph (1) of this Law or the persons referred to in Article 20 of this Law.

Article 32

Liability of the right holder

(1) If a procedure initiated pursuant to this Law is discontinued owing to an act or omission on the part of the right holder, and where samples are taken pursuant to Article 22 paragraph (2) are either not returned or are damaged and beyond use owing to an act or omission on the part of the right holder, or where the goods in question are subsequently found not to infringe an intellectual property right, the right holder shall be liable towards the declarant, the holder of the goods or the person who is the owner of the goods, who has suffered damage in that regard, pursuant to law.

(2) If the right holder fails to act in accordance with Article 26 paragraph (2) of this Law, the customs authorities will not act upon the granted application for customs actions. In this case, the right holder loses the right to file a new application for customs action on the same intellectual property right within one year.

Article 33

Costs

(1) The right holder shall reimburse the costs incurred by the customs authorities from the moment of detention or suspension of the release of the goods, including storage and handling of goods, in accordance with Article 19 paragraph (1), Article 20 paragraph (1) and Article 22 paragraphs (2) and (3) of this Law, as well as costs for the destruction of goods in accordance with Articles 26 and 29 of this Law.

(2) The right holder to whom the suspension of release or detention of goods has been notified shall, upon request, be given information by the customs authority on where and how those goods are being stored and on the estimated costs of storage referred to in paragraph (1) of this Article. The information on estimated costs may be expressed in terms of time, product, volume, weight or service depending on the circumstances of storage and the nature of the goods.

(3) The right holder may require a compensation from the perpetrators of the infringement or other person pursuant to law.

CHAPTER V

EXCHANGE OF INFORMATION AND DATA ON APPLICATIONS FOR CUSTOMS ACTIONS

Article 34

Exchange of information and data on applications

(1) The competent organisational unit in the Customs Administration shall immediately notify the other organisational units on:

- a) applications for customs actions, including its attachments;
- b) applications for extending the period during which the customs authorities are to take action or for modifying it, including its attachments;
- c) the suspension of acting by the customs authority after granting the application.

(2) Where the release of the goods is suspended or the goods are detained, the customs authorities shall record any relevant information and data, including information on the quantity and type of the goods, value, intellectual property rights, customs procedures, countries of provenance, origin and destination, and transport routes and means.

(3) For the purposes of exchange of information as referred to in paragraphs (1) and (2) of this Article, a central database shall be established by the Customs Administration.

(4) The Customs Administration shall ensure the establishment and maintenance of technical and organisational conditions, safe and secure functioning of the central database, according to the regulations on the personal data protection.

Article 35

Central database

(1) The exchange of information and data referred to in Article 34 paragraphs (1) and (2) of this Law and all changes of data of the accepted applications concerning the Article 16 of this Law between customs authorities shall be made via a central database of the Customs Administration and they shall be stored in that database.

(2) For the purposes of processing the information and data, the central database referred to in Article 34 paragraph (3) shall be kept in electronic form. The central database shall contain the information, including information and data referred to in Article 8 paragraph (3), Article 16 and Article 34 of this Law.

(3) The customs authorities shall have right to access the information contained in the central database for the fulfilment of their legal responsibilities in applying this Law.

(4) The competent organisational unit shall enter into the central database information

and data related to the applications for customs actions and, where necessary, shall amend, supplement, correct or delete them. The competent organisational unit shall be responsible for the accuracy, adequacy and relevancy of this information.

Article 36

Data protection provisions

- (1) The processing of personal data in the central database of the Customs Administration shall be carried out in accordance with the regulations on the personal data protection.
- (2) Personal data shall be collected and used solely for the purposes of this Law. Collected personal data shall be accurate and shall be kept up to date.
- (3) The Customs Administration shall be the controller with respect to the processing of personal data contained in the central database in accordance with the regulations on the personal data protection.
- (4) A data subject shall have a right of access to its personal data that are processed through the central database and, where appropriate, the right to the rectification, erasure or blocking of personal data in accordance with regulations on the personal data protection.
- (5) All requests for the exercise of the right of access, rectification, erasure or blocking of personal data shall be submitted to and processed by the competent organisational unit of the Customs Administration.
- (6) Personal data shall not be kept longer than six months from the date the relevant decision granting the application for customs actions has been revoked or the relevant period during which the Customs Administration is to take action has expired.
- (7) Where the right holder has initiated proceeding in accordance with Article 26 paragraph (5) or Article 29 paragraph (9) of this Law and has notified the customs authorities of the initiation of such proceeding, personal data shall be kept for six months after proceedings have determined in a final way whether an intellectual property right has been infringed, unless otherwise stipulated by another Law for cases where it was established that it was an infringement of intellectual property right.

CHAPTER VI

MISDEMANOUR PROVISIONS

Article 37

- (1) A legal entity shall be fined with a charge in the amount of 1000 euro in denar equivalent, and a natural person shall be fined with a charge in the amount of 250 euro in denar equivalent if acting contrary to Article 17 of this Law, so that the misdemeanor authority shall immediately notify the competent organisational unit of the Customs Administration.
- (2) The responsible person in a legal entity shall be fined with a charge in the amount of 100 euro in denar equivalent for the actions referred to in paragraph (1) of this Article.

Article 38

- (1) A legal person shall be fined with a charge in the amount of 2.000 euro in denar equivalent and a natural person shall be fined with a charge in the amount of 500 euro in denar equivalent, if acting contrary to Article 24 of this Law, i.e. uses the information received by the customs authority within the meaning of Article 19 paragraphs (7) and (9), Article 20 paragraph (9), Article 22 or Article 29 paragraph (8) of this Law outside the

procedure and the purposes of establishing an infringement to the intellectual property right.

(2) The responsible person in the legal person shall be fined with a charge in the amount of 250 euro in denar equivalent for the actions referred to in paragraph (1) of this Article.

Article 39

(1) A legal entity shall be fined with a charge in the amount of 2.500 to 5.000 euro in denar equivalent and a natural person shall be fined with a charge in the amount of 500 to 1000 euro in denar equivalent for taking in or taking out or attempting to take in or take out from the customs territory of the Republic of Macedonia, goods that infringe the right of the same trademark as the goods that once were seized from them in a procedure according to Articles 26 and 29 of this Law or that goods are put or there is an attempt to put under a customs procedure with economic effect or to take it in or out into a free zone or free warehouse.

(2) The responsible person in a legal entity shall be fined with a charge in the amount of 500 to 1000 euro in denar equivalent for the actions referred to in paragraph (1) of this Article.

Article 40

Pursuant to the Law on Misdemeanors, conducting the misdemeanor procedure and imposing a sanction for a committed misdemeanor under Articles 37, 38 and 39 of this Law shall be in the exclusive competence of the misdemeanour authority laid down by the Law on Customs Administration.

Article 41

(1) Upon determination of misdemeanour against this Law, the customs officer shall hand it to the perpetrator of the misdemeanor an invitation for payment of a fine or money order in the amount of 200 euro in denar equivalent for a legal entity i.e. in the amount of 50 euro in denar equivalent for a natural person, when the value of the goods subject of the misdemeanour does not exceed 500 euro in denar equivalent.

(2) If the perpetrator fails to voluntarily pay the fine referred to in paragraph (1) of this Article, the customs authority shall submit a request for initiating misdemeanour procedure before the customs misdemeanor authority.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 42

Secondary regulation

The secondary regulations foreseen by this Law shall be adopted within 60 days as of the date of entering into force of this Law at the latest.

Article 43

Transitional provisions

(1) The initiated procedures relating to the submitted applications for customs actions and applications for extension of the period for customs actions until the day when this Law enters into force, shall be completed in accordance with the Law on Customs Measures for Protection of Intellectual Property Rights (Official Gazette of the Republic of Macedonia No. 38/05, 107/07, 135/11 and 69/13).

(2) When the applications for customs action in accordance with the Law on Customs Measures for Protection of Intellectual Property Rights (Official Gazette of the Republic of Macedonia No. 38/05, 107/07, 135/11 and 69/13) are accepted, until the day when this Law enters into force, the Customs Administration will act in the manner and within the deadlines specified in the accepted application.

Article 44

Final provisions

(1) On the day when this Law comes into force, the Law on Customs Measures for Protection of Intellectual Property Rights (Official Gazette of the Republic of Macedonia No. 38/05, 107/07, 135/11 and 69/13) shall cease to apply.

(2) On the day of accession of the Republic of Macedonia to the European Union, the provisions of this Law shall cease to apply.

Article 45

Entry into force

This Law shall enter into force on the eighth day from the date of its publication in the Official Gazette of the Republic of Macedonia.