

CHECKLIST OF ISSUES ON ENFORCEMENT¹

Responses from the Republic of Bulgaria to Questions 15 to 19²

Addendum

Special Requirements Related to Border Measures

- 15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?**

Special provisions for border measures are envisaged in Chapter XII "A" of the Copyright and Neighbouring Rights Act; Chapter V Section III of the Law on Marks and Geographical Indications and Chapter VI of the Law on Industrial Designs. The rules and the procedure for application of border measures are provided in the Regulation on Border Measures for Protection of Intellectual Property Rights (adopted by Regulation No. 249 of the Council of Ministers of 27 November 2000, published in State Gazette No. 98/2000, in force as of 4 December 2000).

Under the provisions of the Regulation, it is possible to apply for the suspension of the release of goods carried across the State border provided that there are valid grounds for suspecting that they infringe intellectual property rights. The procedures are available in respect of goods that involve infringement of copyright, neighbouring rights and rights on marks, but also of geographical indications and industrial designs. These procedures are applicable to goods destined for importation and exportation, including temporary imports and exports.

Border measures do not apply to goods in transit, *de minimis* imports (for non-commercial and non-production use) and perishable goods.

The procedures apply to imports of goods put on the market in another country by or with the consent of the right holder.

¹ Document IP/C/5.

² Responses to Questions 15 to 19 of the Checklist in relation to special requirements related to border measures are being provided below, in addition to the responses to Questions 1 to 14 and 20 to 25 of the Checklist which have been distributed in document IP/N/6/BGR/1.

- 16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?**

Competent Authorities

Customs authorities take actions for suspension of the release of the goods on the basis of written application lodged with the Central Customs Directorate.

Requirements for the Application

The persons entitled to lodge applications are: the holder of the copyright and/or neighbouring rights; the person to whom exclusive user right has been granted; the person entitled to the protection of registered mark, geographical indication or industrial design, as well as the user entered into the Register at the Patent Office of the Republic of Bulgaria.

The application contains the following:

- request for detention by the customs authorities of the goods concerned;
- detailed description of the goods;
- specification of the nature of the infringement;
- requested duration of the period for keeping the goods under surveillance (not exceeding one year);
- proofs that the applicant is the right holder;
- the name, address, headquarters, telephone and fax of the applicant (in cases where the place of residence or the registered office of the applicant is outside the country, the applicant shall specify a judicial address within the territory of the Republic of Bulgaria);
- document that the fee for application of border measures has been paid.

The applicant may also provide the following information, if available:

- the name and address or registered office of the consignee;
- the country of origin of the goods;
- the means of transport used and the name of the carrier;
- the expected date and place of arrival or departure of the goods at the border;

- the tariff code under which the goods are classified in the Customs Tariff of the Republic of Bulgaria;
- any samples, photos and models of the goods;
- information for the authorized traders of the original goods.

The Central Customs Directorate takes a decision on the merits concerning the application and communicates in writing the applicant within 7 days from the lodging of the application. Where one or more of the requirements for the application has not been met the Central Customs Directorate gives the applicant 3 days to complete the requirements. If the deficiencies are not eliminated in due term the Central Customs Directorate refuses to accept the application. The refusal is presented in writing and is motivated. The refusal is subject to an appeal under the provisions of the Administrative Procedures Act.

Duration of Suspension

On the basis of the accepted application, customs authorities detain the goods for a period not exceeding 10 working days from the communication to the applicant for the detention of the goods. This period may be prolonged once by a maximum of 10 working days by the director of the relevant customs office, where the goods are detained, upon a motivated request from the applicant, provided that there is evidence that legal proceeding has been initiated before the court in order to take a substantive decision on the statement of the fact of the infringement and a request for security measures under the Civil Procedures Code has been made.

The customs authorities release the detained goods provided that on the expiry of the set time limit the applicant has not requested a new time limit for suspension of the goods or his application has not been accepted by the customs authorities. In such cases the applicant covers the expenses for the suspension of the release of the goods made by customs authorities to the date of lodging of the application.

Security or Equivalent Assurance and Indemnification of the Importer and of the Owner of the Goods

Under the provisions of Article 96 (c) paragraph 2 of the Copyright and Neighbouring Rights Act customs authorities determine for the applicant a guarantee in money or property in order to cover his liability in case the suspension turns out to be groundless. If after the lodging of the application and the detention of the goods legal proceeding has not been initiated before the court or the suspension turns out to be groundless the importer, the consignee and the owner of the goods have the right of compensation for the injury caused. In all other cases the injured party has the right to claim damages under the general civil legal procedure.

The provisions of Article 53 of the TRIPS Agreement are introduced in the Regulation through its Articles 5 and 6. Under the mentioned provisions the applicant is obliged to present a court decision for imposition of security measure in accordance with Article 309 of the Civil Procedures Code. In order to accept the security measure (in this case it will be the detention of the goods until the decision on the merits of the case has been taken), the court requires the applicant to provide a guarantee serving as indemnification to the person against whom actions have been taken, in case the applicant has not been acting in good faith.

Rights of Inspection and Information

In accordance with Article 4 of the Regulation customs authorities immediately inform the applicant for the detention of the goods, the name and the address or the headquarters of the consignee or the consignor of the goods. They also inform the consignee and/or the consignor of the goods via the carrier or their representatives for the detention of the goods, the grounds for the detention and the name and the address of the applicant. The applicant, the consignee and the consignor of the goods have the right to inspect the goods and to receive samples.

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

According to Article 2.1 (7) of the Regulation a fee for processing the application for detention of the goods by the customs authorities is payable by the applicant. Tariff specifying the amount of the fee is to be adopted by the Council of Ministers.

The decision of the Central Customs Directorate for accepting the application for keeping the goods concerned under surveillance is valid for no more than one year and it is renewable upon request.

The duration of the legal proceedings and the expenses related to it, including the amount of the security depend in every particular case on the instance to which the parties appeal.

The Regulation on Border Measures for the Protection of Intellectual Property Rights is in force as of December 2000. Due to the short period of implementation there is no available information referring the length and cost of the legal proceedings.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

The customs authorities may take actions *ex officio* or upon a request from another government body for detention of goods for which there is valid grounds to suspect that they infringe intellectual property rights. The decision for detention of the goods is subject to appeal under the provisions of the Administrative Procedures Act. Customs authorities immediately inform the right holder, the consignor and the consignee for the detention and allow them to examine the goods. They may seek from the right holder any information that may assist them in expertising the goods. The detention of the goods is for a maximum of 10 working days. If within the time limit the applicant fails to provide evidences that legal proceeding has been initiated before the court in order to take a substantive decision on the statement of the fact of the infringement or a court decision on imposition of security measures under the Civil Procedures Code, customs authorities release the detained goods in case all customs requirements for the importation or the exportation are completed. The same rules apply as in the general case of detention on a written application.

Customs authorities are exempted from liability for their actions taken in good faith referring to the detention of the goods.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

Customs authorities have the right, upon an application of the right holder or on their own initiative, to suspend the release of goods into free circulation as a remedy measure.

Without prejudice to other rights of action in disposition to the right holder and subject to the right of the defendant to seek review by a judicial authority, under the general civil legal procedure the court has the authority to order the seizure (deprivation) and destruction of the infringing goods, as well as to impose a fine in the amount of 200 to 2000 BGL* in case of infringement of copyright or neighbouring rights, and from 500 to 5000 BGL for infringement of marks, geographical indications and industrial designs (Article 95 of the Copyright and Neighbouring Rights Act; Articles 76 and 81 of the Law on Marks and Geographical Indications; Articles 57 and 65 of the Law on Industrial Designs).

* 1 lev (BGL) = 1 German mark (DM).