

Final, enacted 25 June 1999

Law of Georgia on Intellectual Property Related Border Measures

CHAPTER I. GENERAL PROVISIONS

Article 1. Purposes and Sphere of Application of Law

1. This Law defines the rules for use of special border measures with respect to export or release into free circulation on the customs territory of Georgia of counterfeit trademark, pirated copyright goods or appellation of origin or geographical indication. It is based on the Special Requirements Related to Border Measures of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 2. Terms Used in the Law

For the purposes of this Law:

- (a) "Right Holder" shall mean any natural or legal person having legal standing to assert, under the law of Georgia, any of the rights to use or to prevent others from using any trademark or copyrighted material.
- (b) "Pirated Copyright Goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of Georgia;
- (c) "Counterfeit Trademark Goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights, under the law of Georgia, of the owner of the trademark in question;
- (d) "Goods Produced with Infringement of Rights on Appellation of Origin and Geographical Indication" shall mean any goods on which illegal appellation of origin or geographic indication is applied.
- (e) "De Minimis Imports" shall mean small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

CHAPTER II. BASIC PROVISIONS

Article 3. Suspension of Release by Customs Authorities

Any Right Holder who has valid grounds for suspecting that the importation or exportation of Counterfeit Trademark, Pirated Copyright Goods or Goods Produced with Infringement of Rights on Appellation of Origin and Geographical Indication may take

place may apply in writing to the court for an order directing the customs authorities to suspend export or the release of such goods into free circulation.

Article 4. Application

1. Any Right Holder seeking a suspension under Article 3 of this law shall be required to provide:
 - a) adequate evidence to satisfy the court that, under the laws of Georgia, there is prima facie an infringement of the right holder's intellectual property right;
 - b) a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities; and
 - c) if required by the court, a security or equivalent assurance sufficient to protect the exporter, importer and the Customs Department, and to prevent abuse of this law, provided, however, that such security or equivalent assurance shall not unreasonably deter a Right Holder's ability to obtain such a suspension.
2. The court shall inform the applicant and all interested parties within 3 days whether the suspension is granted, and the period for which the customs authorities will take action.

Article 5. Duration of Suspension

If the Rights Holder fails to initiate proceedings leading to a decision on the merits of a case within 14 days, the goods shall be released.

Article 6. Indemnification of the Importer and of the Owner of the Goods

The court may order the applicant to pay the exporter or importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods.

Article 7. Right of Inspection and Information

Without prejudice to the protection of confidential information, the Customs Department shall have the right to give the Rights Holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The Customs Department shall also give the exporter or importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made by the court on the merits of a case, the Customs Department shall inform the right holder of the names and addresses of the consignor, the exporter or importer and the consignee and of the quantity of the goods in question.

Article 8. Remedies

1. Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a court, The Customs Department shall have

the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in paragraph 2 of this Article.

2. The destruction or disposal of Counterfeit Trademark, Pirated Copyright Goods or Goods Produced with Infringement of Rights on Appellation of Origin and Geographical Indication shall be defined by appropriate normative acts.
3. The Customs Department shall not allow the export or re-export of counterfeit trademark goods.

Article 9. De Minimis Imports

This Law shall not apply to small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments.

CHAPTER III.

TRANSITIONAL AND CONCLUDING PROVISIONS

Article 10. Transitional Provisions

For the purposes of implementing this Law, the Head of State Customs Department of Georgia shall issue normative acts stipulated by this Law within two months from its enactment.

Article 11. Concluding Provisions

This Law shall enter into force on the date of its publication.

President of Georgia
Tbilisi, June 25, 1999

E. Shevardnadze