

## Turkish and EU Customs Harmonized

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This October, some important changes were made to The Turkish Customs Code with the 5911 numbered Code and also the new Customs Regulation within EU harmonization. Those regulations brought some revolutionary amendments, some of which are related to the protection of intellectual and industrial property rights within the scope of the Turkish Customs Law.

We can say that the foremost amendment is "simplified destruction procedure" regarding goods which are suspected of infringing an intellectual property right in the Turkish Customs Code. The general rules for the implementation of "facilitated destruction" came into force on October 7 as part of the new Customs Regulation.

Before the existence of this new procedure, counterfeit or imitation goods could only be destroyed by the Turkish Customs Administration after an order was issued by a competent court for the destruction of the goods.

However, according to the new method, the customs authorities can apply a "simplified destruction procedure" in case the right holder informs the customs authorities within 10 working days (or three working days for perishable goods) that the goods concerned infringe an intellectual property right and also provide those authorities with the written agreement of the declarant or owner of the goods to abandon the goods for destruction without any necessity of a declaratory judgment of the court.

### "What is the Advantage of this New Simplified Procedure?"

Destruction of the infringing goods can be faster and can require fewer procedural steps thanks to the new simplified procedure. Before this regulation, the right holder had to go to the court and wait for the completion of the judgment process for a destruction order. It would seem that through this procedure, which was adapted from EU regulations, the Turkish authorities are attempting to respond to the global needs of various business sectors.

When we look at the terms and conditions of the simplified procedure, it is possible to accept the "simplified destruction procedure" as a compromise procedure between the intellectual property rights holder and the owner of the goods or the declarant.

One of the other important amendments is related to the "times" and the "types of goods." According to the Turkish Customs Code before the Amendment, if, within a period of 10 working days following the notification to the right holder of the suspension, the customs administration had not been informed that legal proceedings leading to a decision on the merits of the case had been initiated or that the duly empowered judicial authority had taken provisional measures, the customs procedures would have been carried out in accordance with the request of the declarant.

According to the amendment the goods whose customs procedures have been suspended or confiscated are classified as "perishable goods" and "other goods." The right holder should submit a preliminary injunction decision within three working days for perishable goods and within 10 working days for other goods after the notification date of the decision to the right holder. In addition to the new goods classification, in case of a valid justification upon the application of the rights holder, this period may be extended by a maximum of 10 working days or three working days in the case of perishable goods in appropriate cases. Whereas according to the old law, it was impossible to request additional time.

The New Custom Regulation provides a right to the goods owner or the declarant to receive the suspended or confiscated goods if they pay a security fee to the Customs Authorities. According to this implementation, if the courts do not give a provisional measure decision within 10 days after a legal procedure has been started and all customs processing of the goods has been completed, the goods may be delivered to the owner, declarant, or the importer if they deposit a security fee. At this point, it seems that the aforementioned opportunity may be used only for limited types of intellectual property rights such as designs, patents, supplementary protection certificates or plant variety rights. Trademark rights are excluded as such in EU Council Regulation.

If the goods are found to infringe on an intellectual property right at the end of the procedure they are stored under customs surveillance. The goods are not allowed to enter into Turkish custom territories or free circulation; and placement of the aforementioned goods in free zones is also forbidden. Thus, free zones are also included in the protected territory of intellectual property rights.

In addition to the amendments concerning new customs prosecutions, the application and certification procedures have become more effective. Thanks to a new online application method applied after April 1, 2010, the paper work of the customs administrations will be reduced radically. In the event that the rights holder operates abroad, the procedure can be conducted by the representative domiciled in Turkey. On the application form, the rights holder has to specify during which period of time the customs administrators are to take action; this period cannot exceed one year. Before the amendment, this period was only 30 days.

In addition to that, the rights holder has to add an electronic declaration in which the right holder accepts responsibility if it is subsequently determined that the goods do not infringe an intellectual property rights or if the procedure is discontinued owing to an act or omission by the rights holder.

By these amendments and new regulations, the Turkish Customs legislation and implementation have become closer to EU standards.

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