

Customs Code of the Republic of Azerbaijan (extract)

Chapter 49

Customs control of goods containing objects of intellectual property rights

Article 278. Protection of intellectual property rights by customs authorities

278.1. Customs authorities implement protection of rights of holders on goods containing objects of intellectual property conveyed across the customs border in accordance with this Code and other Acts in the field of customs.

278.2. Protection of rights on goods containing objects of intellectual property conveyed across the customs border, implemented by the customs authorities, shall not impede taking measures on protection of such rights in accordance with other Acts.

Article 279. Customs register of goods containing objects of intellectual property

279.1. The relevant executive authority in view of provision of customs control keeps register of goods containing objects of intellectual property on paper and electronic materials.

279.2. Rules of maintenance of register are established by the relevant executive authority. In the mentioned rules procedure of disclosure of information contained in the register to the customs authorities and applicants should also be envisioned.

Article 280. Inclusion into the register and exclusion from the register of goods containing objects of intellectual property

280.1. Where the rights-holder or the person representing his interests (applicant) has sufficient grounds to deem that his rights on the objects of intellectual property have been infringed or may be infringed during conveyance across the border of goods, he has the right to apply to the relevant executive authority with a request to protect intellectual property rights and inclusion of such goods into the register, with a view to suspend release of piratic and counterfeit goods.

280.2. The statement containing a request to protect intellectual property rights and to include goods containing objects of intellectual property to the registry should contain the following:

280.2.1. information on the right-holder;

280.2.2. information on right on the object of intellectual property;

280.2.3. description of the goods containing objects of intellectual property;

280.2.4. information enabling to reveal that goods are piratic or counterfeit;

280.2.5. Obligation of the applicant to compensate any damage made to the declarant, owner of the goods or any other interested person due to the suspension of release of goods and also compensation of expenditure of customs authorities in case if it is defined that goods are not piratic or counterfactual.

280.3. The statement shall be supplemented by the documents confirming the rights of the applicant on the goods containing object of intellectual property (registration certificate of the piece of work, item of neighbouring rights, certificate on information set and topology of integral scheme, trade mark and geographic location certificate, patent, license agreement, other documents in respect to the Intellectual Property Act).

280.4. Applicant for ensuring fulfillment of the obligation referred to in Article

280.2.5 of this Code shall present to the customs authorities one of the forms of guarantee pursuant to Article 258.1 of this Code. The amount of such guarantee shall be established by the customs authorities within minimal and maximal amounts defined by the relevant executive body.

280.5. The applicant may also attach to the statement the goods specimen containing the object of intellectual property and also piratic or counterfeit goods.

280.6. The relevant executive authority considers the application within 1 (one) month of the day of its submission and makes decision on the inclusion of goods containing objects of intellectual property into the register or on refuse from it in cases referred to in Article 280.7 of this Code.

280.7. Where the applicant fails to fulfill the requirements of Article 280 of this Code the relevant executive authority makes decision on non-inclusion of goods into the register and notifies the applicant in writing. After removing shortcomings declarant has a right to appeal with a request to include the goods containing object of intellectual property into the register.

280.8. In the case of any changes in the statement or in the documents attached to it the applicant shall be obliged to advise the relevant executive authority without a delay.

280.9. Where the goods containing objects of intellectual property were included in the register on the grounds of false information presented by the applicant, these goods on decision of the relevant executive authority may be excluded from the register. The applicant shall be notified about it in writing by the relevant executive authority.

Article 281. Period of protection of rights by the customs authorities

281.1. The time periods of protection of rights of the right-holder shall be determined for 5 (five) years by taking into consideration the time period indicated by the applicant from the date of taking decision by the relevant executive authority on entry of the object of intellectual property into the register. This period may be extended on the basis of the application of the applicant by the decision of the relevant executive authority.

281.2 Total time period of protection by the customs authorities of rights on the object of intellectual property may not exceed the time period of a right of the right-holder on the object of intellectual property.

Article 282. Customs clearance and customs control of goods containing objects of intellectual property

282.1. Customs clearance and customs control of goods containing objects of intellectual property are carried out in the order defined by this Code and other legislation acts in the field of customs.

282.2. Rules of conveyance of goods containing objects of intellectual property across customs border are governed by this Code, other legislation acts in the field of customs and intellectual property act.

Article 283. Suspension of release of goods containing objects of intellectual property

283.1. In case the customs clearance and the customs control procedures have revealed that the goods which contain objects of intellectual property are piratic or

counterfeit, the release of such goods is suspended for 10 (ten) working days by decision of the head of the customs authority carrying out the customs clearance, or by the person representing him. Upon motivated request of the applicant indicated suspension period may be extended for more 10 (ten) working days.

283.2. The customs authority immediately notifies both the declarant and the applicant in writing about the imposed suspension on release of goods containing objects of intellectual property and the reasons of suspension. In addition, name, surname, patronymic, residential address and registration address details of the declarant and the applicant respectively must be indicated in the notification.

283.3. Rules of the suspension of release of goods containing object of intellectual property, delivery of information to the applicant and the declarant on the resolution and the extension of the suspension period of release shall be established by the relevant executive authority.

Article 284. Compensation of caused damage and expenses

284.1. The applicant shall compensate damage inflicted on the declarant, holder of the goods or any other persons concerned as a result of suspension of the release of goods containing object of intellectual property listed in the register if it is revealed that goods are not piratic and counterfeit.

284.2. Expenses of the customs authorities as a result of suspension of the release of goods containing object of intellectual property shall be compensated by the declarant where the goods are piratic and counterfeit, otherwise by the applicant.

Article 285. Provision of information. Goods probes and samples

285.1. The customs authorities provide the applicant and the declarant with the information required for defining whether goods in relation of which resolution on suspension of the release is passed are piratic or counterfeit.

285.2. The information presented to the applicant and the declarant is confidential and should not be revealed, transferred to any third parties except prescribed by law.

285.3. Upon permission of the customs authorities the applicant and the declarant or their representatives have the right to take probes and samples of goods release of which has been suspended under the customs control and to examine them.

Article 286. Cancellation of resolution on suspension of release of goods

286.1. If after submission by the customs authority to the applicant notification about suspension of the release in time limits prescribed by Article 283.1 of this Code, there was no information in the customs authorities about the beginning of the trial on lawsuit of applicant, customs clearance and release of goods containing object of intellectual property shall be carried out in the order prescribed by this Code.

286.2. Trial procedure referred to in Article 286.1 of this Code should begin no later than 20 (twenty) working days of the date of submission of application to the court with notification about it the customs authority.

286.3. Where it is determined that goods are piratic and counterfactual, measures prescribed by legislation are taken in respect to them.

286.4. Resolution on suspension of release of goods shall be cancelled by the customs authorities prior to the expiry of time limits indicated in Article 283.1 of

this Code in the following cases:

286.4.1. by request of the applicant to cancel decision on suspension of release;

286.4.2. exclusion from the register of goods containing object of intellectual property.

286.5. Resolution on suspension of release shall be cancelled by the chief of the customs authority passed this resolution or by the person representing him.

286.6. Cancellation of resolution on suspension of release of goods and release of goods do not impede application of the right-holder to other competent state bodies about protection of his rights in respect to protection of rights for object of intellectual property.

Article 287. Additional powers by the customs authorities on control on goods containing objects of intellectual property

287.1. Custom authorities have right to suspend release of goods, which are not listed in the register and contain object of intellectual property, and also goods not indicated in the application of the applicant, where the customs authorities discover that they are piratic or counterfeit, for time limit prescribed by Article 283.1 of this Code.

287.2. In cases prescribed by Article 287.1 of this Code, the customs authorities immediately notify the right-holder and the declarant, require from them provision of information necessary for the exact identification whether goods are piratic or counterfeit.

Article 288. Goods exempted from measures on protection of rights of intellectual property

The customs authorities shall not apply the measures prescribed by this Code to the goods conveyed across the customs border by natural persons or posted by international postal dispatches provided such goods are not intended for manufacturing or any commercial activity