

**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

CZECH REPUBLIC

The present document reproduces the consolidated text¹ of Act No. 191/1999 Coll. of 29 July 1999 on measures concerning entry, export and re-export of goods infringing certain intellectual property rights, and on amendments of some other Acts (see document IP/N/1/CZE/E/1), as amended by Acts No. 569/1991 Coll., No. 586/1992 Coll., No. 593/1992 Coll., No. 121/2000 Coll. and No. 260/2002 Coll., notified by the Delegation of the Czech Republic by means of a communication dated 28 October 2002.

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA PROPRIÉTÉ
INTELLECTUELLE NOTIFIÉES AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

RÉPUBLIQUE TCHÈQUE

Le présent document contient le texte consolidé¹ de la Loi n° 191/1999 du 29 juillet 1999 relative aux mesures concernant l'entrée, l'exportation et la réexportation des marchandises qui portent atteinte à certains droits de propriété intellectuelle, et modifiant d'autres lois (voir le document IP/N/1/CZE/E/1), telle que modifiée par les Lois n° 569/1991, n° 586/1992, n° 593/1992, n° 121/2000 et n° 260/2002, notifié par la Délégation de la République tchèque dans une communication datée du 28 octobre 2002.

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL
NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

REPÚBLICA CHECA

En el presente documento se reproduce el texto consolidado¹ de la Ley N° 191/1999 de fecha 29 de julio de 1999 relativa a medidas para la entrada, exportación y reexportación de bienes que infringen determinados derechos de propiedad intelectual, y que modifica otras leyes (véase el documento IP/N/1/CZE/E/1), modificada por las Leyes N° 569/1991, N° 586/1992, N° 593/1992, N° 121/2000 y N° 260/2002, que la Delegación de la República Checa notificó mediante una comunicación de fecha 28 de octubre 2002.

¹ In English only. The text in the original language is available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées peuvent consulter le texte dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

THE PRIME MINISTER

**hereby promulgates a full wording of Act No. 191/1999 Coll.,
laying down measures concerning entry, export and re-export of goods infringing some
intellectual property rights and on amendments of some other acts arising
from amendments made by the Act No 121/2002 Coll. and by Act No. 260/2002 Coll.**

Act 459/2002

**laying down measures concerning entry, export and re-export
of goods infringing some intellectual property rights**

The Parliament has hereby enacted the following Act of the Czech Republic:

PART ONE

**MEASURES CONCERNING ENTRY, EXPORT AND RE-EXPORT OF GOODS
INFRINGING SOME INTELLECTUAL PROPERTY RIGHTS**

CHAPTER I

SUBJECT MATTER OF THE ACT

Section 1

- (1) The present Act stipulates circumstances and conditions under which a Customs office adopts a measure in the event it harbors a well-founded suspicion that goods which have been
 - (a) proposed for release under the free circulation procedure², the export procedure³, or in respect whereof a re-export application has been submitted⁴, or
 - (b) identified in the course of Customs supervision or a Customs check, released under any of the suspensive procedures⁵, or placed in a free Customs zone or a free Customs warehouse⁶, are counterfeit or pirated goods.
- (2) Insofar as indisputable cases dealt with in petty offence or administrative tort proceedings as provided for herein are concerned, the present Act also stipulates powers of Customs offices to recognize the goods in question as counterfeit or pirated goods, order goods which a Customs office or a court has declared to be counterfeit or pirated goods destroyed or rendered useless, and deal with petty offences or administrative torts in case of a violation of the present Act.

Section 2

For the purpose of the present Act, the term

- (a) “counterfeit goods” as used herein shall denote

² Sections 128 to 132 of Act No. 13/1993 Coll., the Customs Act, as amended by Act No. 113/1997 Coll.

³ Sections 214 to 216 of Act No. 13/1993 Coll., the Customs Act, as amended by Act No. 113/1997 Coll.

⁴ Section 233 of Act No. 13/1993 Coll.

⁵ Section 133, Paragraph 1, of Act No. 13/1993 Coll.

⁶ Sections 217 to 232 of Act No. 13/1993 Coll., the Customs Act, as amended by Act No. 113/1997 Coll.

1. goods, including packages thereof, which bear a designation which is either the same as, or can be mistaken for, a trademark registered for other goods without a consent of the owner of such a trademark or a generally known trademark, thus infringing the trademark owner's rights⁷, and all articles bearing the same or similar designation (labels, stickers, logos, tags, promotional leaflets, operating instructions, warranty documents etc.), even if submitted to a Customs office separately, i.e. without the goods in question, or if a Customs office detects or discovers them separately, i.e. without the goods in question,
 2. packages bearing a designation referred to in Paragraph 1 above, even if submitted to a Customs office separately, i.e. without the goods in question, or if a Customs office detects or discovers them separately, i.e. without the goods in question,
 3. any moulds or dies specifically designed or adapted to produce counterfeit trademarks, or goods bearing such trademarks, or computer models of such trademarks,
 4. goods infringing rights of a patent owner or co-owner or rights of an Authorship Certificate owner⁸,
- (b) "pirated goods" as used herein shall denote goods, including packages thereof, directly or indirectly manufactured without a consent of the owner or co-owner of a patent, of an Authorship Certificate, of a copyright or another right protected under the Copyright Act, or of a right pertaining to a registered industrial design or utility design, or without a consent of the person authorized to manufacture such goods, which are either copies *per se*, or which include such copies, if making such copies infringes these rights pursuant to a special legal act⁹, moulds or dies specifically designed or adapted to produce pirated goods, if the use of such a mould or die infringes or may infringe the owner's rights pursuant to the special legal act referred to above,
- (c) "an authorized person" as used herein shall denote the owner or co-owner of a patent, of an Authorship Certificate, of a copyright or another right protected under the Copyright Act, or of a right pertaining to a registered industrial design or utility design, representatives or authorized persons¹⁰, or other authorized persons,
- (d) "an indisputable case" as used herein shall denote any case in which an authorized person, invited to do so in writing, submits to the Customs office, within a period of time stipulated in Section 11, Paragraph 3, of the present Act, a written statement clearly indicating that detained goods are counterfeit or pirated goods and the information provided in such a statement is accurate, complete, valid and true.

Section 3

The present Act shall not apply to goods

- (a) which are designated by a trademark with a consent of the trademark's owner, protected under a patent, by a copyright or a similar right, or a right related to a registered industrial or utility design,

⁷ Act No. 137/1995 Coll., on trademarks

⁸ Act No. 527/1990 Coll., on inventions, industrial designs and improvement proposals, as amended by Act No. 519/1991 Coll.

⁹ Act No. 35/1965 Coll., on literary and scientific works and works of art (Copyright Act), as amended. Act No. 527/1990 Coll., as amended by Act No. 519/1991 Coll.

Act No. 478/1992 Coll., on utility designs

¹⁰ Act No. 35/1965 Coll., as amended

Act No. 237/1995 Coll., on collective administration of copyrights and similar rights, and changes and amendments of some other legal acts.

- are manufactured with a consent of the owner of such a right, but are proposed for a release or placed under any of the Customs procedures referred to in Section 1, Paragraph 1, without a consent of the owner of the right, or in respect whereof a re-export application has been submitted, or are being placed into a free Customs zone or a free Customs warehouse,
- (b) are manufactured or designated by a trademark under conditions different from those agreed with the owner of the right in question,
- (c) are not of a commercial nature, are imported by a traveller, and are relieved from the import duty¹¹.

CHAPTER II

SUBMISSION OF A REQUEST ASKING A CUSTOMS OFFICE TO TAKE MEASURES

Section 4

Submission of the Application

- (1) An authorised person may submit a written request asking the Customs office in the territorial jurisdiction of which goods in any of the situations described in Section 1, Paragraph 1, are found to take measures preventing its rights from being infringed upon,
- (2) The request provided for in Paragraph 1 above shall be submitted to the Customs Directorate in Hradec Králové (hereinafter „the Customs Directorate“).
- (3) The request provided for in Paragraph 1 above shall contain the following particulars:
- (a) a detailed description of the goods in question, allowing them to be identified,
 - (b) a period of time, or deadline, in which the measure of the Customs Directorate (hereinafter „the measure“) is to be implemented,
 - (c) the identification of the Customs office which is to implement the measure.
- (4) Attached to the request shall be a document proving that the applicant is an authorized person, as defined in Section 2, Paragraph (c). Eligible as such documents shall be:
- (a) a document proving an entry of the right in question into an appropriate register, which, insofar as such rights are concerned, is issued by an authority appointed by a special legal regulation¹²,
 - (b) a document proving that the applicant is indeed the owner of the intellectual property right in question, related to the goods in question,
 - (c) a document granting the right to make use of the rights referred to in Section 2, Paragraphs (a) and (b),
 - (d) a document authorizing the applicant to submit the request or a document referred to in Paragraphs (a) or (b) above, if a representative of the authorized person or another authorized person submits the request.
- (5) In addition to the information and documents referred to in Paragraphs 3 and 4, the authorized person shall provide to the Customs Directorate any additional information needed to evaluate and handle the request, if they are available to that. The term „additional information“ as used herein shall denote, in particular, any special properties of the protected goods, documents indicating the Customs value or price of the goods in question, documents on their package, or documents permitting to distinguish counterfeit or pirated goods from the protected goods.

¹¹ Sections 46 to 48 of Ordinance No. 136/1998 Coll., on exemption of goods from the import duty, as amended by Ordinance No. 125/1999 Coll.

¹² E.g. Act No. 527/1990 Coll., Act No. 478/1992 Coll., Act No. 137/1995 Coll.

- (6) If the request concerns pirated goods, the authorized person shall also provide, in addition to the information referred to in Paragraph 3, the following information, if such information is at its disposal:
- (a) the place where the goods in question are found, or their presumed destination,
 - (b) information concerning the identity of the consignment or individual packages,
 - (c) the presumed date of arrival or dispatch of the goods in question,
 - (d) means of transport used to carry the consignment,
 - (e) information concerning the importer, exporter or holder of the goods in question.
- (7) The request, documents, information and additional data may be submitted electronically, providing that they will also be sent to the Customs office in writing not later than on the next business day.
- (8) The request shall be submitted in Czech. If the request is submitted in a language other than Czech, an official translation into Czech shall be enclosed therewith. The above provision shall also apply to the documents, information and additional data referred to in Paragraphs 4 to 7.

Section 5

- (1) If the request meets the conditions and requirements stipulated in Section 4, the Customs Directorate shall invite the authorized person to deposit, within 15 days from the day the invitation is served, an adequate security (hereinafter „the security“) referred to in Section 6 and to pay a lump sum referred to in Section 7. If the Customs Directorate does not accommodate the request, it shall notify the applicant thereof, stating the reasons.
- (2) When the requirements and conditions referred to in Paragraph 1 have been met, the Customs Directorate shall order, within 15 days, the Customs office specified in the request to take the measures, including a period of time for which they are to remain in effect, and also notify the authorized person thereof.
- (3) If the authorized person disagrees with how its request has been treated, it shall ask, within one month from the day a rejection notice or an invitation provided for in Paragraph 1 above is served, the Ministry of Finance (hereinafter „the Ministry“) to evaluate and assess whether the approach of the Customs Directorate was correct. The Ministry shall make the assessment and communicate its outcome to the authorized person within one month since the latter asked it to make the assessment.
- (4) The authorized person shall immediately notify the Customs Directorate that its right is no longer registered in the relevant register or that it has expired for another legal reason.
- (5) The submission of a request as described in Section 4 and the procedure outlined in Paragraphs 1 to 4 above shall not be governed by the Code of Administrative Procedure¹³.

Section 6

Deposition of a Security to Ensure the Compensation of Costs and Potential Damage

- (1) A security ensuring the compensation of costs and potential damage shall be used to reimburse
- (a) damage inflicted upon persons or persons in respect whereof a Customs office took a measure, if it later cancelled its decision to withhold the goods for any of the reasons set forth in Section

¹³ Act No. 71/1967 Coll., on administrative proceedings (Code of Administrative Procedure)

- 13, Paragraph 1, or if was subsequently proven that the withheld goods were not counterfeit or pirated goods,
- (b) reasonable costs incurred by the Customs office, in accordance with Section 7, Paragraph 1,
- (2) The security referred to above shall be a lump sum equal to CZK 100,000.
- (3) The deposition of the security referred to in Paragraph 1 above may be in a form of
- (a) a bank guarantee¹⁴,
- (b) a cash deposit on the account of the Customs Directorate; the submission of a check the payment of which is guaranteed by a bank shall be deemed equal to a cash deposit.

Section 7

Compensation of costs

- (1) If a Customs office took a measure as a result of a request, and later cancelled its decision to withhold the goods or to suspend the Customs proceedings for any of the reasons set forth in Section 13, Paragraph 1, or if was subsequently proven that the withheld goods were not counterfeit or pirated goods, the authorized person shall reimburse the costs reasonably incurred by the Customs office in connection with having the goods in question under its Customs supervision.
- (2) A lump sum equal to CZK 1,500, - shall be paid for taking a measure. The lump sum comprises eligible costs incurred by the Customs Directorate in connection with processing the request.
- (3) If the goods in question have been proven to be counterfeit or pirated goods, the compensation of costs shall be paid by the importer (in cases of imported goods), the exporter (in cases of exported or re-exported goods) or the person/person found in possession of the goods in question (all other cases).
- (4) The Customs Directorate shall decide how much the cost compensation will amount to. The compensation of costs shall become due and payable within 30 days from the day the decision is served.
- (5) If the reasons for which a security has been provided in accordance with Section 6 above no longer exist, the Customs Directorate shall submit a list of expenses deducted therefrom and release the balance. Cash deposit shall be used, first and foremost, to reimburse the costs referred to in Section 6, Paragraph 1, and Subparagraph (b).
- (6) Provisions of Paragraphs 1 to 5 above shall apply *mutatis mutandis* to deal with requests for extending a deadline in which the Customs office measure is to be implemented and enforced.

Section 8

Damage Compensation

- (1) If a Customs office took a measure as a result of a request, and later cancelled its decision to withhold the goods or to suspend the Customs proceedings for any of the reasons set forth in Section 13, Paragraph 1, or if was subsequently proven that the withheld goods were not counterfeit or pirated goods, the authorized person shall be obliged to compensate any damage sustained by the owner, importer, exporter, consignee or consignor of the goods in question in connection therewith.

¹⁴ Sections 313 to 322 of the Commercial Code

- (2) Damage compensation claims shall be governed *mutatis mutandis* by relevant provisions of the Civic Code¹⁵.

CHAPTER III DISCOVERY OF COUNTERFEIT OR PIRATED GOODS BY CUSTOMS SUPERVISION OR A CUSTOMS CHECK

Section 9

- (1) If a Customs office discovers,
- (a) during a Customs control of goods transported across the state border¹⁶,
 - (b) when trying to locate goods which have escaped Customs supervision¹⁷,
 - (c) during a Customs control of goods placed under any suspensive procedure¹⁸, or
 - (d) during a Customs control of goods placed in a Free Customs zone or a Customs warehouse¹⁹
- and at a time when a request to take measures has not yet been submitted, or the Customs has not yet said that a measure can be taken, goods in respect whereof there exist a well-founded suspicion that they may be counterfeit or pirated goods, it shall issue a ruling whereby the goods in question will be withheld, notifying the Customs Directorate of its action without any unnecessary delay. At the same time, the Customs Directorate shall notify the authorized person, if is known to it, of the facts it has established and of the potential infringement of the authorized person's right so that the latter can submit a request to the Customs Directorate to take a measure, as provided for in Section 4. A similar procedure shall be used in the case of goods having been handed over to a Customs office by another authority, as per a special legal regulation²⁰.
- (2) If a Customs office discovers, in the course of verifying a Customs declaration²¹ at a time when a request to take measures has not yet been submitted, or the Customs has not yet said that a measure can be taken, goods in respect whereof there exists a well-founded suspicion that they may be counterfeit or pirated goods, it shall issue a ruling whereby the goods in question will be withheld, notifying the Customs Directorate of its action without any unnecessary delay. At the same time, the Customs Directorate shall notify the authorized person, if the latter is known to it, of the facts it has established and of the potential infringement of the authorized person's right so that the latter can submit a request to the Customs Directorate to take a measure, as provided for in Section 4.
- (3) A Customs office may withhold goods in accordance with Paragraphs 1 and 2 without considering rights of third persons. The Customs office shall issue a ruling to withhold the goods in question and serve it to the person whose goods have been withheld. The person whose goods have been withheld may appeal the decision within fifteen days of the day of its service.
- (4) The ruling to withhold the goods in question shall list reasons for which the goods are withheld, and an instruction concerning rights and obligations of the person, which it concerns. The Customs office may leave goods, which could otherwise be withheld in possession of the person concerned, ordering the latter not to use, take away or otherwise dispose of the goods in question.

¹⁵ Sections 420 to 445 of the Civic Code, as amended

¹⁶ Section 80 of Act No. 13/1993 Coll., as amended by Act No. 113/1997 Coll.

¹⁷ Section 37 of Act No. 13/1993 Coll., as amended by Act No. 113/1997 Coll.

¹⁸ Section 48, Paragraph 1, of Act No. 13/1993 Coll.

¹⁹ Section 219, Paragraph 4, of Act No. 13/1993 Coll.

²⁰ E.g. Section 23, Paragraph 8, of Act No. 634/1992 Coll., on consumers' protection, as amended

²¹ Sections 115 to 122 of Act No. 13/1993 Coll., as amended by Act No. 13/1997 Coll.

- (5) The person who has been served a ruling withholds goods shall surrender the goods in question to the Customs office. If the goods in question are not surrendered to the Customs office even after the person has been invited to do so, they can be taken away from whoever is in possession of them. An official protocol on surrendering or taking away of withheld goods shall be prepared, including a description of the goods in question. The person that has surrendered the goods in question or that the goods in question have been taken away from shall be issued a receipt to that effect by the Customs office.
- (6) If withheld goods are no longer needed for further proceedings and their forfeiture, confiscation in petty offence or administrative tort proceedings, or destruction pursuant to Section 14 hereof are out of question; they shall be returned to the person which they were withheld from.
- (7) If the title to withheld goods is presented by a person other than that from which the goods in question were taken, or if the Customs office has doubts as to whether the goods belong to the person which they were taken away from, the Customs office shall not surrender the goods and instruct the persons concerned to refer their claims to the court.

Section 10

If, in matters referred to in Section 9, Paragraphs 1 and 2, the authorized person fails to submit a request provided for in Section 4 above in three business day from the day it is served a notice that the goods in question have been withheld, its right and title shall be rendered null and void and the Customs office shall cancel the ruling to withhold the goods issued hereunder.

CHAPTER IV

REQUIREMENTS GOVERNING THE ADOPTION OF MEASURES BY CUSTOMS OFFICES

Section 11

- (1) If a Customs office, which has been notified by the Customs Directorate that measures can be taken, establishes, after a potential discussion with the authorized person, that goods matching the description of counterfeit or pirated goods in the notice of the Customs Directorate and falling into any of the situations outlined in Section 1, Paragraph 1, of the present Act are found within its jurisdiction, it shall issue a ruling suspending Customs proceedings to place the goods in question under a proposed Customs procedure or to re-export the goods in question, which are already in progress, for 10 business days and notify the Customs Directorate of its action without any unnecessary delay. For the purpose of facilitating further proceedings, the Customs office shall be entitled to take samples of and prepare documentation pertaining to the withheld goods.
- (2) If a Customs office discovers the facts referred to in Paragraph 1 above when exercising Customs supervision and during a Customs control according to Section 9, Paragraphs 1 and 2, an authorized person has submitted a request in accordance with Section 4, and the Customs Directorate has notified the Customs office that it is free to take measures, the latter shall notify the Customs Directorate of the facts referred to above without any unnecessary delay; the provisions of Paragraph 1 regarding the sampling and documentation shall apply *mutatis mutandis*.
- (3) The Customs office, which has taken the measures, provided for in Paragraphs 1 and 2 above shall notify the authorized person thereof without any unnecessary delay; so that the latter can

seek to protect its rights. When invited to do so in writing by the Customs office, the authorized person shall be obliged to submit, within three days from the day it is served the Customs office's notice, a written statement clearly indicating that the withheld goods are counterfeits or pirated goods, including a confirmation that the information provided therein is accurate, complete, valid and true; if the above statement is submitted in a language other than Czech, an Official translation into Czech shall be enclosed therewith. If the authorized person requests so in writing, the Customs office shall give it the first name, surname and permanent residence address, or the name, business firm and seat of the declarant, and, if known, also the first name, surname and permanent residence address, or the name, business firm and seat of the consignee, so that the authorized person is able to protect its rights.

- (4) The authorized person shall be obliged to notify the Customs office, within ten business days from the day the Customs office informs the authorized person that goods have been withheld or that Customs proceedings have been suspended, whichever is applicable, of any precautionary measure ordered by a court or of the commencement of court proceedings leading to a decision that the goods in question are counterfeit or pirated goods. The above notice shall be made in writing or orally, in the form of a deposition. It may also be served by a wire, Teletype, fax, or electronically, providing that it will also be submitted to the Customs office in writing or orally, in the form of a deposition, not later than within three business days.
- (5) The Customs office shall permit the authorized person, and any other persons, which the measure in question concerns, to inspect the withheld goods.
- (6) The provisions of Section 9, Paragraphs 3 to 7, shall apply *mutatis mutandis*. on the withheld of goods.

Section 12

Prohibition to Release of Goods

- (1) If a court or a Customs office has issued a valid and enforceable ruling to the effect that the goods in question are counterfeits or pirated goods, the Customs office shall not release the goods in question into free circulation procedure or allow them to be placed under the export and re-export procedures, suspensive procedure, or in a free Customs zone or a Free Customs warehouse, issues a ruling to this effect pursuant to a special legal act²², and handle the goods in accordance therewith.
- (2) Provisions of Paragraph 1 above shall apply *mutatis mutandis* to cases in which the Customs office has proceeded in accordance with Section 9, Paragraphs 1 and 2, the Customs Directorate has told the Customs office to take measures, and a court or a Customs office has issued a valid and enforceable ruling to the effect that the goods in question are counterfeits or pirated goods.

Section 13

Cancellation of a ruling to withhold goods or to suspend Customs proceedings

- (1) If the authorized person has failed to notify the Customs office, pursuant to Section 11, Paragraph 4, of
 - (a) a provisional measure ordered by a court, or
 - (b) of the commencement of court proceedings leading to a decision whether the goods in question are counterfeits or pirated goods, or not,

²² Section 104, Paragraph 7, of Act No. 13/1993 Coll., as amended by Act No. 13/1997 Coll.

the Customs office shall cancel its ruling to withhold the goods, carry on with Customs proceedings, and be allowed to place the goods in question under the proposed Customs procedure, release them for re-export, or permit them to be placed in a Free Customs zone or a Free Customs warehouse, subject to all requirements set forth in Customs regulations having been met. For reasons worth of consideration, the Customs office may, at a written request of the authorized person, extend the period by another ten business days.

- (2) If in respect of the goods in question there exists a well-founded suspicion that they may infringe rights arising from a patent, trademark or registered industrial or utility design, the owner, importer, exporter, consignee or consignor thereof may ask the Customs office to cancel its ruling to withhold the goods or to suspend Customs proceedings, as a result whereof the goods in question may be placed under the proposed Customs procedure, released for re-export placed in a Free Customs zone or a Free Customs warehouse, subject to the owner, importer, exporter, consignee or consignor thereof having deposited a security, and on the condition that
 - (a) all requirements stipulated in Customs regulations have been met,
 - (b) within the period of time set forth in Paragraph 1, the authorized person has notified the Customs office of the commencement of court proceedings leading to a decision whether the goods in question are counterfeits or pirated goods, or not,
 - (c) within the period of time set forth in Paragraph 1, no ruling instituting a provisional measure has been issued.
- (3) The decision whereby a ruling to withhold the goods or to suspend Customs proceedings has been cancelled, as provided for in Paragraphs 1 and 2, cannot be appealed.
- (4) The security deposited pursuant to Paragraph 2 shall be high enough to protect the authorized person against any infringement of its rights. The deposition of the security shall be without prejudice to the authorized person's right to resort to whatever additional legal remedies it can use to protect its rights. The deposited security shall be released if the owner, importer, exporter, consignee or consignor of the goods in question has not filed a suit to protect his rights within 20 business days since having been notified of the suspension of Customs proceedings or the withhold of goods.
- (5) If the Customs office has extended the period as provided for in Paragraph 1 above, the Customs office may, upon a written request of the owner, importer, exporter, consignee or consignor of the goods in question, extend the term set forth in Paragraph 4 to not more than 30 business days.
- (6) Insofar as the storage of goods in respect whereof Customs proceedings have been suspended or which have been withheld are concerned, temporary storage provisions, as stipulated by a special legal act²³, shall apply *mutatis mutandis*.
- (7) The deposition of the security may be in a form of
 - (a) a bank guarantee¹³⁾,
 - (b) a cash deposit on the account of the Customs office; the submission of a check the payment of which is guaranteed by a bank shall be deemed equal to a cash deposit.

²³ Sections 93 to 95 of Act No. 13/1993 Coll., as amended by Act No. 13/1997 Coll.

Section 14
Destruction of a Counterfeit or pirated goods

- (1) If a court or a Customs office has issued a valid and enforceable ruling to the effect that the goods in question are counterfeits or pirated goods, the owner or holder has not destroyed the goods in question himself²⁴, and there has been no ruling with respect to a forfeiture or confiscation of the goods in question, the Customs office, upon request of the authorized person or acting on its own, shall order the owner or holder of the counterfeit or pirated goods in question
- (a) to destroy the same within a period of time set by the Customs office, under Customs supervision, and at his own expenses,
 - (b) to remove the goods in question from trade circulation in order not infringes upon rights of the authorized person, without any right to claim any damage compensation.

The above actions shall be without prejudice to the authorized person's right to resort to whatever additional legal remedies it can use to protect its rights.

- (2) Counterfeits or pirated goods may be also left for the benefit of the state, subject to the state not incurring any costs in connection therewith. In such cases, provisions of Paragraph 1, Subparagraph (a), shall apply.
- (3) If the owner or holder of counterfeit or pirated goods is not known to, or has not been identified by the Customs office, the latter shall arrange the destruction of the goods in question. The Customs office shall prepare an official protocol confirming the destruction of such counterfeits or pirated goods.
- (4) If the owner or holder of a counterfeit or pirated goods fails to comply with his duty imposed by a ruling taken pursuant to Paragraph 1, the Customs office shall be entitled to issue a ruling to confiscate the goods in question and to destroy them at the expense of their owner or holder. The costs of confiscation and destruction of the goods in question shall become due and payable within 30 days since the ruling of the Customs office whereby they have been assessed and levied having been served.
- (5) Measures consisting in
- (a) re-exporting the counterfeit or pirated goods in question in an unchanged state,
 - (b) a simple removal of trademarks which counterfeit goods are illegally provided with, save for exceptional cases,
 - (c) an assignment of another Customs-approved treatment or use

shall not be deemed to constitute measures the purpose of which is to remove counterfeits or pirated goods from trade circulation, as per Paragraph 1, Subparagraph (b).

- (6) A simple removal of trademarks with a consent of the authorized person, if the trademark is placed on goods of a different class than those for which it was originally registered, shall be deemed to constitute the exceptional cases referred to Paragraph 5, Subparagraph (b). The

²⁴ Section 233 of Act No. 13/1993 Coll.

trademarks shall be removed and destroyed at the expense of the owner or holder of the counterfeits.

- (7) In addition to the information stipulated in Section 11, Paragraph 3, the Customs office shall communicate to the authorized person, upon the latter's written request, names and addresses of the consignor, importer or exporter, and manufacturer of the goods which have been recognized as counterfeits or pirated goods, as well as quantities of such counterfeits or pirated goods.

CHAPTER V

PETTY OFFENCES AND ADMINISTRATIVE TORTS

Section 15

The present Act shall be deemed infringed and violated by whoever

- (a) has submitted a Customs declaration to release counterfeits or pirated goods for free circulation or to place them under the export procedure,
- (b) by having violated Customs regulations, has achieved that counterfeits or pirated goods have been released for free circulation, placed under the re-export procedure or under any of the suspensive procedures, or in a Free Customs zone or a Free Customs warehouse,
- (c) has submitted a request to release counterfeits or pirated goods for re-export or to place them in a Free Customs zone or a Free Customs warehouse,
- (d) has exported or imported counterfeits or pirated goods,
- (e) owns, holds, stores or sells counterfeit or pirated goods in the territory of the Czech Republic,
- (f) failed to comply with conditions governing the handling of goods withheld hereunder.

Part I *Petty Offences*

Section 16 **Petty Offences**

- (1) A petty offence shall be deemed committed by a natural person, unless the natural person in question is an entrepreneur, who has perpetrated any of the infringements or violations of the law listed in Paragraph 1 above, albeit because of recklessness or negligence.
- (2) A petty offence shall be punishable by the following sanctions:
 - (a) a fine,
 - (b) forfeiture of goods.
- (3) Customs offices shall deal with petty offences falling hereunder.
- (4) The petty offences listed in Section 15, Paragraphs (a) to (e), may be subject to the payment of a fine of up to CZK 100,000 -, and the petty offences listed in Section 15, Paragraph (f), may be subject to the payment of a fine of up to CZK 50,000 -.

- (5) The fines shall constitute revenue of the state budget.

Section 17

- (1) A fine for an offence falling under Section 15, Paragraphs (a) to (e), may be levied within one year since the Customs office learned that the goods in question were counterfeit or pirated goods, but not later than six years from the day the actual infringement, violation or omission took place.
- (2) A fine for an offence falling under Section 15, Paragraph (f), may be levied within one year since the Customs office learned that the conditions applying to goods withheld hereunder were not complied with, but not later than six years from the day the actual infringement took place.

Section 18

Playability of Fines

A fine levied for a petty offence falling hereunder shall be paid within thirty days from the day on which the ruling whereby the fine has been levied becomes effective and enforceable.

Section 19

Forfeiture of Goods

- (1) In addition to a fine or as a separate action, the goods belonging to the perpetrator may be ordered forfeited in the following cases:
- (a) if they have been used to perpetrate the petty offence, or intended for this purpose,
 - (b) if they have been obtained through the petty offence, or in exchange for goods acquired by the petty offence.
- (2) Forfeiture of goods may not be ordered where the value of the goods is markedly disproportionate to the nature of the petty offence in question.
- (3) The ownership of the forfeited goods shall pass onto the State.
- (4) Forfeiture of goods may only be ordered in compliance with the terms and periods set forth in Section 17.

Section 20

Confiscation of Goods

- (1) In cases where a petty offence has not been sanctioned by forfeiture of the goods in question, the Customs office may decide that such goods will be confiscated if:
- (a) they belong to a perpetrator who cannot be prosecuted for the petty offence in question,
 - (b) they do not belong to the perpetrator of the petty offence, or they belong to him or her only partly,
 - (c) the perpetrator is unknown.
- and if security of people and property or another public interest demand so.
- (2) The confiscation of goods shall not be applied if six years have elapsed since the time the petty offence in question was committed.

Section 21 **Jurisdiction**

A petty offence shall be dealt with by the Customs office within the territorial jurisdiction of which the petty offence was ascertained, although it may have been committed within the territorial jurisdiction of another Customs office.

Section 22

- (1) In the instruction attached to its ruling whereby an appeal challenging a ruling imposing a sanction for a petty offence hereunder is rejected, the body of appeal shall also specify the period of time within which it is possible to file a suit at a court to examine the ruling in the matter of the appeal.
- (2) Unless stipulated otherwise herein, petty offences and related proceedings shall be governed by general petty offence legislation²⁵.

Part II *Administrative Torts*

Section 23 **Administrative Tort**

- (1) An administrative tort shall be deemed committed by a legal entity or a natural person who is person an entrepreneur that has committed any of the actions listed in Section 15.
- (2) Customs offices shall deal with administrative torts falling hereunder.

Section 24 **Sanctions**

- (1) An administrative tort shall be punishable by the following sanctions:
 - (a) a fine,
 - (b) forfeiture of goods.
- (2) Fines may be levied up to and including:
 - (a) CZK 10,000,000 - for infringements and violations falling under Section 15, Paragraphs (a) to (e),
 - (b) CZK 15,000,000 - for infringements and violations falling under Section 15, Paragraphs (a) to (e), if committed repeatedly or in a greater extent,
 - (c) CZK 20,000,000 - for infringements and violations falling under Section 15, Paragraphs (a) to (e), if committed repeatedly or in a greater extent.
- (3) Administrative torts falling under Section 15, Paragraph (f), may be subject to the payment of a fine of up to CZK 1,000,000 -.

²⁵ Act No. 200/1990 Coll., on petty offences, as amended

- (4) The term “repeatedly” as used herein shall denote a violation which has taken place within 2 years from the day the previous ruling imposing a sanction for an infringement of the present Act upon the legal entity in question became legally valid and enforceable.
- (5) The term “in a greater extent” as used herein shall denote goods infringing upon rights of the authorized person, whose Customs value exceeds CZK 1,000,000 - or, in the case of exported goods, its export price determined according to a special legal regulation²⁶ exceeds CZK 1,000,000 -.
- (6) When determining the amount of the fine, the gravity, manner, duration and consequences of the illegal actions shall be taken into account.
- (7) Forfeiture of goods may be ordered as a sanction either separately, or in conjunction with a fine.
- (8) The fines shall constitute revenue of the state budget.

Section 25

- (1) A fine for an administrative tort according to Section 24, Paragraph 2, may be levied within one year since the Customs office learned that the goods in question were counterfeits or pirated goods, but not later than six years from the day the actual infringement, violation or omission took place.
- (2) A fine for an administrative tort according to Section 24, Paragraph 3, may be levied within one year since the Customs office learned that the conditions applying to goods withheld hereunder were not complied with, but not later than six years from the day the actual infringement took place.

Playability of fines

A fine levied for an administrative tort falling hereunder shall be paid within thirty days from the day on which the ruling whereby the fine has been levied becomes legally effective and enforceable.

Section 27

Forfeiture of Goods

Insofar as the sanction of forfeiture of goods is concerned, provisions of Section 19 shall apply *mutatis mutandis*. Forfeiture of goods may only be ordered in compliance with the terms and periods set forth in Section 25.

Section 28

Confiscation of Goods

- (1) In cases where an administrative tort has not been sanctioned by forfeiture of the goods in question, the Customs office may decide that such goods will be confiscated if they do not belong to the perpetrator of the administrative tort, or if security of people and property or another public interest demand so.

²⁶ Act No. 526/1990, on prices, as amended

- (2) The confiscation of goods shall not be applied if six years have elapsed since the time the administrative tort in question was committed.
- (3) The ownership of the confiscated goods shall pass onto the State.

Section 29 **Jurisdiction**

An administrative tort shall be dealt with by the Customs office within the territorial jurisdiction of which the administrative tort was ascertained, although it may have been committed within the territorial jurisdiction of another Customs office.

Section 29a

In the instruction attached to its ruling whereby an appeal challenging a ruling imposing a sanction for an administrative tort hereunder is rejected, the body of appeal shall also specify the period of time within which it is possible to file a suit at a court to examine the ruling in the matter of the appeal.

CHAPTER VI INDEMNIFICATION

Section 30

The State shall not be held responsible for any damage sustained by and caused to persons and persons in connections with measures adopted pursuant to the present Act.

CHAPTER VII COMMON AND INTERIM PROVISIONS

Section 31

- (1) The Customs office shall arrange, at the expense of the perpetrator of a petty offence or an administrative tort:
 - (a) the destruction of forfeited or confiscated counterfeit or pirated goods,
 - (b) the removal of trademarks from forfeited or confiscated counterfeit or pirated goods, if placed on goods of a different class than those for which the trademark in question was originally registered, or
 - (c) other modifications of forfeited or confiscated counterfeit or pirated goods, so that they can be sold without an infringement of rights of the authorized person.
- (2) The Customs office, upon request of the authorized person or acting on its own, shall order the authorized person to destroy, at its own expense and under Customs supervision, counterfeit or pirated goods in respect whereof a confiscation has been ordered in petty offence proceedings hereunder.

Section 32

Costs incurred pursuant to Section 31, Paragraph 1, and shall be due a payable within 30 days from the day the ruling of the Customs office determining them is served.

Section 33

- (1) A timely served appeal against a ruling imposing a sanction for a petty offence or an administrative tort shall have a dilatory effect which cannot be ruled out.
- (2) Unless stipulated otherwise, an appeal against a ruling of Customs authorities shall not have a dilatory effect. For reasons worth of consideration, the Customs authorities may permit an appeal to have a dilatory effect, if justified interests of the person or person concerned demand so and if such a permission shall not render the collection of outstanding payments more difficult or if a public interest does not prevent it.
- (3) If the compensation of costs determined in accordance with Section 7, Paragraph 4, and secured by a cash deposit as provided for in Section 6, is not paid voluntarily within the period of time stipulated in Section 7, Paragraph 4, the cash deposit shall be used to settle the compensation and the balance, if any, shall be returned to the authorized person.

Section 34

Insofar as matters related to the payment and collection of compensations of costs incurred in connection with adopting measures, compensations of costs reasonably incurred by Customs offices and arising from the duty to keep goods under Customs supervision, and compensations of costs incurred in connection with the confiscation or destruction of goods are concerned, Customs offices shall follow *mutatis mutandis* provisions of regulations dealing with the administration of taxes and duties²⁷.

Section 35

Unless stipulated otherwise herein, proceedings taking place before Customs authorities shall be governed by:

- (a) regulations dealing with the administration of taxes and duties, insofar as the payment, collection and exaction of fines are concerned²⁸,
- (b) the Code of Administrative Procedure in all other matters¹³.

Section 36

Measures of Customs authorities pursuant to a special legal act²⁹ and adopted upon requests of authorized persons, which have been submitted prior to the present Act becoming effective, shall be

²⁷ Sections 59, 73 and 73a of Act No. 337/1992 Coll., on the administration of taxes and duties, as amended

²⁸ Act No. 337/1992 Coll., on the administration of taxes and duties, as amended

²⁹ Section 53a of Act No. 35/1965 Coll., as amended by Act No. 86/1996 Coll.
Section 14, Paragraph 3, of Act No. 137/1995 Coll.

taken by Customs authorities until December 31, 1999, unless the authorized person required the measure to be taken for a period of time elapsing earlier.

Sections 37 to 40

Deleted

PART SIX

EFFECT

Section 41

The present Act shall become effective on the first day of the third calendar month following the day of its promulgation.

Act No 121/2000 Coll. on Copyright, Rights related to Copyright and on amendment of certain Laws (Copyright Act), entered in force on 1st December 2000.

Act No. 260/2002 Coll., amending Act No. 191/1991 Coll., laying down measures concerning entry, export and re-export of goods infringing some intellectual property rights, and on amendments of some other acts, as amended by Act No. 121/2000 Coll., Act No. 586/1992 Coll., on income tax, as amended, Act No. 593/1992 Coll., on reserves for the purpose of assessing the income tax basis, as amended, and Act No. 569/1991 Coll., on the Land Property Fund of the Czech Republic, as amended, becomes effective as of September 1, 2002.

Prime Minister
