

Simplified destruction proceedings in Turkey

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The New Customs Regulation, which came into effect in October 2009, provides a new mechanism for intellectual property right holders, known as 'simplified destruction'. This enables owners to take more efficient action in cases of an infringement during customs proceedings. Until 2009, there was no legal arrangement for the simplified destruction of goods at customs. The New Customs Regulation was accepted to harmonise Turkish customs law with EU legislation. For this reason, the simplified destruction provisions are highly similar to EU Council Regulation no.1383/2003.

The simplified destruction mechanism enables intellectual property rights holders to request the destruction of the suspected infringing or counterfeit products that have been detained or suspended under control of customs, without a court order. Within 10 working days following the suspension of the suspected goods at customs (three working days if the goods are perishable), trademark, patent, design, utility model, copyright, copyright-related rights, integrated circuit topography rights or plant variety rights holders may contact the customs authority and request the destruction of the goods within the scope of the simplified destruction mechanism. The period of 10 working days can be extended by a further 10 working days in case of an acceptable excuse.

When requesting the destruction of the suspended goods in the scope of the simplified destruction mechanism, intellectual property rights holders should submit a declaration explaining that the suspended goods are counterfeit or pirated, how the suspended goods infringe, and the true owner's written consent. The owner of the suspended goods should consent (in writing) to the destruction of the suspended goods under customs control. Upon receipt of the simplified destruction request and the written consent of the suspended goods' owner, the customs authority decides to destroy the suspended goods and constitutes a 'destruction board'. The destruction is carried out by licensed waste facility under the supervision of the rights holder.

The simplified destruction mechanism is a rapid and cost-effective method for rights owners, since it does not require a court order for the destruction. Also, the suspended goods' owners usually prefer this method rather than incurring warehouse fees while awaiting a court decision. In fact, this method is preferred by the customs authorities as well, since upon the receipt of the true owner's written consent, the decision for destruction is easily issued.

Turkish customs authorities are experienced and effective in combating counterfeit/pirated goods because of the country's growing counterfeit market, which grew up as a result of its position between the European Union and Asian/Middle Eastern countries. Although rights owners can record their rights at customs, the customs authorities can also *ex officio* suspend goods that are suspected of infringing an intellectual or industrial property right, and inform the rights owner. Until the New Customs Regulation, a rights holder had to start a civil or criminal action and obtain an injunction order within 10 working days of receiving notification of the suspended goods.

Although it has been almost 18 months since the New Customs Regulation was accepted, it is not possible to say that the 'simplified destruction' method is used effectively. Rights owners prefer not to use it, and due to its rare use, the customs authorities have not gained experience in implementing the method. For this reason the simplified destruction process takes more than a month to implement. We believe that, in due course, rights owners will be able to use the simplified destruction mechanism more effectively.

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