

ACT
No. 191/1999 Coll.
of July 29, 1999,
**on measures concerning entry, export and re-export of goods
infringing certain intellectual property rights, and amending some other acts**

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

PART ONE
**MEASURES CONCERNING IMPORT, EXPORT AND RE-EXPORT OF GOODS
INFRINGING CERTAIN INTELLECTUAL PROPERTY RIGHTS**

Chapter I

SUBJECT MATTER OF THE ACT

Article 1

- (1) The present Act stipulates conditions under which a customs office takes measures if it harbours a justified suspicion that goods which are
- (a) proposed to be released for free circulation¹, or placed under the export procedure², or with respect to which a re-export application has been filed³, or placed under any of the procedures involving suspensive arrangements⁴, or placed in a free customs zone or a free customs warehouse⁵,
 - (b) discovered in the course of customs supervision or a customs check in other cases
- are counterfeit or pirated goods.
- (2) The present Act also authorises customs offices to order destruction or another method of depreciation of goods which have been declared counterfeit or pirated goods by a court, as well as to deal with offences and misdemeanours arising from violations of the present Act.

Article 2

For the purpose of the present Act, the term

- (a) "counterfeit goods" shall denote

¹ Articles 128 to 132 of Act No. 13/1993 Coll. (Customs Act), as amended by Act No. 113/1997 Coll.

² Articles 214 to 216 of Act No. 13/1993 Coll.

³ Article 233 of Act No. 13/1993 Coll.

⁴ Article 133 of Act No. 13/1993 Coll.

⁵ Articles 217 to 232 of Act No. 13/1993 Coll.

1. goods, including their packages, on which a marking which is either the same as, or confusingly similar to, a trademark registered for other goods is placed without the consent of the owner of the trademark or a generally known trademark, thus damaging rights of the trademark owner⁶, as well as all items and articles carrying the same or similar marking (marks, logos, labels, stickers, promotional leaflets, instructions for use, warranty documents etc.), including cases when they have been presented to a customs office separately without the goods they belong to, or when a customs office has discovered them separately without the goods they belong to;
 2. a package bearing the marking referred to in Subparagraph 1 above, including cases when it has been presented to, or discovered by, a customs office separately, i.e. without the goods it belongs to;
 3. a mould or die specifically designed or modified to produce counterfeit trademarks or goods bearing such a trademark, or its computer model;
 4. goods infringing upon rights of the owner or co-owner of a patent or a copyright⁷,
- (b) "pirated goods" shall denote goods, including their packages, directly or indirectly manufactured without the consent of the owner or co-owner of a patent, the owner of a copyright certificate, copyright title or another right protected under the Copyright Act, or owner of a title attached to a registered industrial design or utility design, or without the consent of the person authorised to manufacture the goods in question, which are copies or include a copy provided that making of the copy constitutes an infringement of the above rights under a special act⁸, and also moulds or dies specifically designed or modified to produce pirated goods, if the use of such a mould or die is or could be detrimental to the owner's rights under a special legal standard.
- (c) "authorised person" shall denote the owner or co-owner of a patent, the owner of a copyright certificate, the owner of a trademark, the owner of a copyright title or another right protected under the Copyright Act, or the owner of a title attached to a registered industrial design or utility design, an authorised person's representative⁹ or another authorised person.

Article 3

The present Act shall not apply to goods which

- (a) bear a trademark with the consent of its owner, are protected by a patent, a copyright or a right similar to copyright, or a right attached to a registered industrial design or utility design, are manufactured with the consent of the owner of such a right, but which are

⁶ Act No. 137/1995 Coll. (Trademarks Act)

⁷ Act No. 527/1990 Coll., on inventions, industrial designs, and rationalisation proposals.

⁸ Act No. 35/1965 Coll., on literary, scientific, and art works (Copyright Act), as amended by subsequent legislation.

Act No. 527/1990 Coll., on inventions, industrial designs, and rationalisation proposals, as amended by Act No. 591/1991 Coll.

Act No. 478/1995, on utility designs.

⁹ Act No. 35/1965 Coll.

Act No. 237/1995 Coll., on collective management of copyrights and similar rights, and changing and amending some other legal acts.

proposed for or placed under any of the procedures listed in Article 1, Paragraph (1), Subparagraph (a), or with respect to which a re-export application has been filed, or are placed in a free customs zone or a free customs warehouse without the consent of the owner of such a right,

- (b) are manufactured or furnished with a trademark under terms and conditions different from those agreed upon with the owner of the right in question,
- (c) are not of a commercial nature, are imported by a traveller, and are relieved from import customs duties¹⁰.

Chapter II

SUBMISSION OF AN APPLICATION REQUESTING A MEASURE TO BE TAKEN BY THE CUSTOMS OFFICE

Article 4

Submission of the Application

- (1) An authorised person may submit a written request asking the customs office in the jurisdictional territory of which the goods in any of the situations described in Article 1, Paragraph (1), Subparagraph (a) are found to take measures preventing his or her rights to be infringed.
- (2) The request shall be submitted to the customs directorate in the jurisdictional territory¹¹ of which the applicant has his or her permanent residence or seat. If the authorised person submitting the request does not have his or her permanent residence or seat in the territory of the Czech Republic, the request may be submitted to any customs directorate.
- (3) The request shall contain the following particulars:
 - (a) a detailed description of the goods in question, permitting the latter to be identified;
 - (b) facts justifying the suspicion that the goods in question infringe upon the pertinent right(s);
 - (c) the time for which the measure taken by the customs office (hereinafter "the measure") is to be implemented;
 - (d) the identification of the customs office which is to take the measure.
- (4) Attached to the request shall be a document proving that the applicant is an authorised person as defined in Article 2, Subparagraph (c). Such a document may be
 - d) a certificate of entry of the right or title in question into an appropriate register, which is issued, insofar as rights and titles registered in such a manner are concerned, by an authority defined by a special act¹²;

¹⁰ Articles 46 to 48 of Decree No. 136/1998 Coll., on relief of goods from import customs duties.

¹¹ Article 7, Paragraph 2, of Act No. 13/1993 Coll.

¹² For example: Act No. 527/1990 Coll., on inventions, industrial designs, and rationalisation proposals, Act No. 478/1995, on utility designs, Act No. 137/1995 Coll. (Trademarks Act).

- e) a document proving its holder to be the owner of an unregistered right or title to an industrial or utility design;
 - f) a document entitling its holder to use the rights defined in Article 2, Subparagraphs (a) or (b);
 - g) a document entitling its holder to submit the request, or a document specified in Subparagraphs (a) or (b) above, if the request is submitted by an authorised person's representative or another authorised person;
- (1) In addition to the information and documents referred to in Paragraphs (3) and (4) above, the authorised person shall provide to the customs directorate any additional available information needed to consider the request. The term "additional information" refers particularly to data on specific properties of the protected goods, documents showing the customs value or price of the goods, package documents, documents permitting to distinguish between counterfeit or pirated goods from the protected goods etc.
- (2) If the request concerns pirated goods, the authorised person shall provide, in addition to the particulars listed in Paragraph (3) above, the following information, if available:
- (f) the place where the goods are found, or their anticipated destination;
 - (g) information identifying the consignment or individual packages;
 - (h) the estimated arrival/dispatch time of the goods;
 - (i) the means used for transporting the goods;
 - (j) information about the importer, exporter, or holder of the goods.
- (1) The request shall be submitted in Czech. If the request is submitted in a foreign language, there shall be an authorised translation into Czech enclosed therewith. The same shall apply to the documents, information, and additional data mentioned in Paragraphs (4) to (6) above.

Article 5

- (1) If the request meets the requirements laid down in Article 4 above, the customs directorate shall invite the authorised person to deposit, within 15 days of such an invitation, an adequate guarantee (hereinafter "the guarantee") as provided for in Article 6 below, and to settle a lump sum as stipulated in Article 7 below. If the customs directorate does not comply with the request it shall inform the applicant about the fact and the reasons thereof in writing.
- (2) Within 15 days of the conditions laid down in Paragraph (1) above having been met, the customs directorate shall instruct the customs office mentioned in the request to take the measure, including the time for which it is to be implemented; it shall also communicate these facts to the authorised person.
- (3) If the authorised person does not agree with the manner in which the request has been dealt with, he or she shall ask, within one month from the delivery of the negative notification or invitation provided for in Paragraph (1) above, the Ministry of Finance (hereinafter "the Ministry") to examine whether the procedure employed by the customs directorate was correct. The Ministry shall examine whether the procedure employed by the customs directorate was correct, and communicate its findings to the authorised person within one month from having been asked to do so.

- (4) The authorised person shall notify without delay the customs directorate that his or her right is no longer registered in the pertinent register or that it has expired because of another legal reason.
- (5) The submission of the request as provided for in Article 4 and the procedure outlined in Paragraphs (1) to (4) above shall not be governed by the Administrative Code¹³.

Article 6

Deposition of a Guarantee Providing for a Compensation of Costs and Potential Damages

- (1) The guarantee providing for a compensation of costs and potential damages shall be used to ensure the payment of
 - (a) damages caused to persons against whom the customs office has taken the measure in question, if the customs office has cancelled its ruling to withhold the goods for the reasons set forth in Article 13, Paragraph (1), or if it has later been proven that the withheld goods are neither counterfeit goods nor pirated goods,
 - (b) the compensation of costs efficiently spent by the customs office in accordance with Article 7, Paragraph (1).
- (2) The amount of the anticipated damage according to Paragraph (1), Subparagraph a) above shall be set by the customs directorate on the basis of the customs value or price of the protected goods mentioned in the request submitted by the person according to the Paragraph (4), Subparagraph 5).
- (3) The deposition of the guarantee provided for in Paragraph (1) above may be accomplished by
 - (a) a bank guarantee¹⁴,
 - (b) depositing a cash sum to the account of the customs directorate; the presentation of a cheque the payment of which is guaranteed by a bank shall be deemed equal to a deposit in cash.

Article 7

Compensation of Costs

- (1) If a customs office adopts a measure in connection with the request, and subsequently cancels its ruling to withhold the goods for the reasons set forth in Article 13, Paragraph (1), or if it is later proven that the withheld goods are neither counterfeit goods nor pirated goods, the authorised person shall be obliged to compensate the costs efficiently and economically spent by the customs office as a result of the goods in question having been under customs supervision.
- (2) The adoption of a measure shall be subject to a payment of a lump sum. The lump sum is represented by reasonable average yearly costs incurred by the customs office as a result of adopting the measure. If the customs directorate, acting upon the request of the authorised

¹³ Act No. 71/1967 Coll. (Administrative Code).

¹⁴ Articles 313 to 322 of the Business Code.

person, extends the time for which the measure is to be implemented, the compensation of costs shall be increased to twice the lump sum for each subsequent year. The lump sum shall be stipulated in a decree issued by the Ministry.

- (3) If it has been proven that the goods in question are counterfeit or pirated goods, the compensation of costs shall be paid by the importer (insofar imported goods are concerned), or by the exporter (where exported or re-exported goods are involved), or by the person at whom the goods in question have been found (in all other cases).
- (4) The amount of the compensation of costs shall be determined by the customs directorate. The compensation of costs shall be paid within thirty days from the day the customs directorate's decision is communicated to the payer.

Article 8 Compensation of Damages

- (1) If a customs office adopts a measure in connection with the request, and subsequently cancels its ruling to withhold the goods for the reasons set forth in Article 13, Paragraph (1), or if it is later proven that the withheld goods are neither counterfeit goods nor pirated goods, the authorised person shall be obliged to compensate the damage inflicted as a result of the apprehension of the goods in question upon their owner, importer, exporter, consignee, or consignor.
- (2) The damage compensation shall be governed *mutatis mutandis* by provisions of the Civil Code¹⁵.

CHAPTER III DISCOVERY OF COUNTERFEIT OR PIRATED GOODS IN THE COURSE OF CUSTOMS SUPERVISION OR A CUSTOMS CHECK IN OTHER CASES

Article 9

- (1) If the customs office finds,
 - (a) when performing a customs check of goods transported across the state border¹⁶, or
 - (b) when searching for goods removed from customs supervision¹⁷, or
 - (c) when performing a customs check¹⁸ of goods placed under any of the procedures involving suspensive arrangements, or
 - (d) when performing a check of goods placed in a free customs zone or a free customs warehouse¹⁹,

¹⁵ Articles 420 to 425 of the Civil Code.

¹⁶ Article 80 of Act No. 13/1993 Coll.

¹⁷ Article 37 of Act No. 13/1993 Coll.

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

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

- at a time when no request for a measure has yet been submitted or when the customs directorate has not yet announced that a measure may be adopted, goods in respect whereof there exists a justified suspicion that they are counterfeit or pirated goods, it shall issue a ruling whereby the goods will be withheld and notify the customs directorate without any unnecessary delay. At the same time, the customs office shall notify the authorised person (if he or she is known to it) of its finding regarding the potential infringement of his or her rights, so that he/she could submit a request in accordance with Article 4 above.
- (2) If the customs office finds, when verifying a customs declaration²⁰ at a time when no request for a measure has yet been submitted or when the customs directorate has not yet announced that a measure may be adopted, goods in respect whereof there exists a justified suspicion that they are counterfeit or pirated goods, it shall issue a ruling whereby the goods will be withheld and notify the customs directorate without any unnecessary delay. At the same time, the customs office shall notify the authorised person (if he or she is known to it) of its finding regarding the potential infringement of his or her rights, so that he/she could submit a request in accordance with Article 4 above.
 - (3) The customs office shall be entitled to withhold goods as outlined in Paragraphs (1) and (2) above regardless of rights of third parties. The customs office shall issue a ruling whereby the goods in question are withheld, and deliver it to the person at whom the goods have been found. The person at whom the goods have been found may lodge an appeal against the ruling within 15 days from its delivery.
 - (4) The ruling whereby the goods in question have been withheld shall indicate reasons of the action, as well as advice regarding rights and obligations of the person whom the ruling concerns. The customs office may leave goods that can be withheld with the person concerned, and instruct him or her that he/she must not use, sell, or otherwise dispose of the goods.
 - (5) The person to whom the ruling withholding the goods in question has been delivered shall be obliged to surrender the goods to the customs office. If the goods are not surrendered upon the appeal of the customs office, they may be taken away from their holder. An official record of the surrender or taking away of the goods shall be prepared, which shall also include a description of the goods in question. The person who has surrendered the goods, or from whom the goods have been taken away, shall be given a receipt for them.
 - (6) If withheld goods are no longer needed for further proceedings, and their forfeiture or confiscation as a result of offence or misdemeanour proceedings, or their destruction as provided for in Article 14 below, are out of question, they shall be returned to the person whom they were withheld from.
 - (7) If the right to withhold goods is claimed by a person different from that at whom the goods in question were withheld, and the customs office has doubts whether the goods indeed belong to the former person, or if the customs office has doubts whether the goods in question indeed belong to the person at whom they were withheld, it shall not surrender the

²⁰ Articles 115 to 122 of Act No. 13/1993 Coll.

goods in question and it shall advise the persons concerned to refer their respective claims to the court.

Article 10

If, in the cases referred to in Article 9, Paragraphs 1 and 2, the authorised person fails to submit a request provided for in Article 4 above within three workdays from the day he or she is delivered the ruling whereby the goods in question are withheld, his or her right shall be rendered null and void.

CHAPTER IV CONDITIONS OF THE ADOPTION OF A MEASURE BY THE CUSTOMS OFFICE

Article 11

- (1) If the customs office to which its customs directorate has announced that it is possible to adopt a measure learns, on its own or after a meeting with the authorised person, that there are goods in any of the situations described in Article 1, Paragraph (1), Subparagraph (a), and matching the counterfeit or pirated goods description found in its jurisdictional territory, it shall issue a ruling suspending already commenced customs proceedings regarding the placement of the goods in question under the proposed customs procedure or their release for re-export for a period of ten workdays, issue a ruling withholding the goods in question, and notify the customs directorate of its actions without any unnecessary delay. For the purpose of facilitating further proceedings, the customs office shall be authorised to sample the goods in question and prepare documentation pertaining thereto.
- (2) If the customs office establishes the facts referred to in Paragraph (1) above in the course of customs supervision, in cases other than mentioned in Paragraph (1) above, it shall issue a ruling withholding the goods in question, and notify the customs directorate of its actions without any unnecessary delay; the provisions of Paragraph (1) on sampling and documentation shall apply *mutatis mutandis*.
- (3) The customs office that has adopted the measures referred to in Paragraphs (1) or (2) above shall notify the authorised person without any unnecessary delay, so that he or she can protect his or her rights. The authorised person shall notify the customs office within ten workdays from being notified of the apprehension of goods or of the suspension of customs proceedings whether the court has ordered an injunction, or whether it has commenced proceedings leading to a verdict proclaiming the goods in question counterfeit or pirated goods. The above information shall be either submitted in writing, or communicated orally and entered into a record. It may also be wired, telexed, or faxed, but must be supplemented by a written notice or personal communication entered into a record

not later than three days thereafter. If the court ruling is positive the customs office shall inform the authorised person, at his or her request, of the name and address of the declarant and the name of the consignee, if it knows them.

- (4) The customs office shall permit the authorised person and the person(s) whom the adopted measure concerns to inspect the withheld goods.
- (5) Provisions of Article 9, Paragraphs 3 to 7, dealing with the withholding of goods shall apply *mutatis mutandis*.

Article 12

Ban on Release of Goods

- (1) If the court has ruled that the goods in question are counterfeit or pirated goods, the customs office shall not release the goods for free circulation or into an export or re-export procedure; it shall issue a ruling in accordance with a special act²¹ and dispose of the goods in question in accordance with this Act.
- (2) Provisions of Paragraph (1) above shall apply *mutatis mutandis* in cases when the customs office proceeded in accordance with Article 9, Paragraphs 1 and 2, the customs directorate instructed the customs office to adopt a measure, and court proceedings have proven that the goods in question are counterfeit or pirated goods.

Article 13

Cancellation of the Ruling Withholding the Goods in Question or Suspending Customs Proceedings

- (1) If the authorised person fails to notify the customs office within ten workdays from being notified of the apprehension of goods or of the suspension of customs proceedings in accordance with Article 11, Paragraph 3, that
 - (a) the court has ordered an injunction, or
 - (b) the court has commenced proceedings leading to a verdict proclaiming the goods in question counterfeit or pirated goods,

the customs office shall revoke its ruling withholding the goods in question, resume customs proceedings, and may place the goods under the proposed customs procedure, or release them for re-export, or permit their placement in a free customs zone or a free customs warehouse provided that all conditions set forth in customs regulations having been met. For reasons worth considering, the customs office may, at a written request of the authorised person, extend the above deadline by an additional ten workdays.

- (2) If there exists with respect to the goods in question a justified cause to believe that they infringe upon a right arising from a patent, trademark, or registered industrial or utility design, the owner, importer, exporter, consignee, or consignor of the goods may ask the customs office to revoke its ruling withholding the goods or suspending customs

²¹ Article 104, Paragraph 7, of Act No. 13/1993 Coll.

proceedings, whereupon the goods in question may be placed under the proposed customs procedure, or released for re-export, or placed in a free customs zone or a free customs warehouse, if the owner, importer, exporter, consignee, or consignor of the goods has filed a lawsuit to protect his rights and subject to

- (b) all conditions set forth in customs regulations having been met,
 - (c) the applicant having deposited a guarantee to ensure a compensation of damage potentially caused to the authorised person, if the court subsequently rules that the goods in question infringes upon a right arising from a patent, trademark, or registered industrial or utility design (hereinafter "the deposition of a guarantee"),
 - (d) the authorised person having notified, within the period of time set forth in Paragraph (1) above, the customs directorate or the customs office of the commencement of court proceedings leading to a verdict proclaiming the goods in question counterfeit goods or pirated goods,
 - (e) no injunction having been ordered after the period of time set forth in Paragraph (1) above.
- (3) The decision cancelling a ruling withholding the goods or suspending customs proceedings cannot be appealed.
- (4) The guarantee deposited in accordance with Paragraph (2), Subparagraph (b), above shall be sufficient to protect the authorised person against any infringement of his or her right or title. The deposition of the guarantee shall not affect in any way the authorised person's right to resort to other legal means and actions which he or she may apply to protect his or her rights. The deposited guarantee shall be released if the owner, importer, exporter, consignee, or consignor of the goods in question has not filed a lawsuit to protect his or her rights within twenty workdays from being notified of the suspension of customs proceedings or apprehension of the goods.
- (5) If the customs office has extended the deadline as provided for in Paragraph (1) above, it may also extend, at the request of the owner, importer, exporter, consignee, or consignor of the goods in question, the deadline stipulated in Paragraph (4) to thirty workdays maximum.
- (6) As to the storage of the goods in question during the time customs proceedings are suspended, or the goods are withheld, temporary storage provisions of a special act²² shall apply *mutatis mutandis*.
- (7) The deposition of the guarantee may be accomplished by:
- (g) a bank guarantee¹⁴;
 - (h) depositing a cash sum to the account of a customs office; the presentation of a cheque the payment of which is guaranteed by a bank shall be deemed equal to a deposit in cash.

Article 14

²² Articles 93 to 95 of Act No. 13/1993 Coll.

Destruction of Counterfeit or pirated goods

- (1) If the court has lawfully ruled that the goods in question are counterfeit or pirated goods, the owner or holder has not destroyed them himself or herself²³, and there has not been any ruling to forfeit or confiscate the goods in question, the customs office, acting upon a proposal of the authorised person or on its own, shall order the owner or holder of the counterfeit or pirated goods to
 - (a) destroy the goods in question by a deadline set by the customs office at his or her own expense and under supervision of the customs office, or
 - (b) remove the goods in question from trading in order not to infringe upon rights of the authorised person without any title to a compensation of damage.
 - (c) The above provision shall be without prejudice to the use of any other legal means and actions which the authorised person may apply to protect his or her rights.

- (1) Counterfeit or pirated goods may be abandoned to the State provided that no costs for the state will arise therefrom. In such case the provision of the paragraph 1, letter a) shall apply.

- (1) The customs office shall issue a ruling to destroy imported or exported counterfeit goods and pirated goods, and arrange their destruction, if their owner is not known or has not been identified. The customs office shall make a record of the destruction of the counterfeit goods and pirated goods.

- (1) If the owner or holder of the counterfeit or pirated goods fails to comply with his or her duty imposed by a ruling in accordance with Paragraph (1) above, the customs office shall be authorised to issue a ruling to confiscate and destroy the goods in question at the expense of the owner or holder. The costs of confiscation and destruction shall be due and payable within thirty days from the delivery of the customs office's ruling whereby they have been prescribed.

- (1) The following shall not be considered measures aimed to remove counterfeit or pirated goods from trading as provided for in Paragraph (1), Subparagraph (b):
 - (a) a re-export of counterfeit or pirated goods in an unchanged state;
 - (b) a simple removal of trademarks illegally used on counterfeit goods, except in exceptional cases;
 - (c) the assignment of another customs-approved treatment to the goods in question.

- (1) The term "exceptional case of the removal of trademarks" as used in Paragraph (5), Subparagraph (b), above, shall refer to a simple removal of trademarks with consent of the authorised person, providing that the trademark was placed on goods of a class different from that for which it has been registered. The trademarks shall be removed and destroyed at the expense of the owner or holder of the counterfeit goods.

- (1) In addition to the information listed in Article 11, Paragraph (3), above, the customs office shall provide, upon a written request submitted by the authorised person, the names

²³ Article 233 of Act No. 13/1993 Coll.

and addresses of the consignor, importer, or exporter and producer of the goods that have been recognised as counterfeit or pirated goods, as well as their quantities.

CHAPTER V OFFENCES AND MISDEMEANOURS

Article 15

The present Act shall be deemed violated by anyone who

- (a) submitted a customs declaration to release counterfeit or pirated goods for free circulation or to place them under an export procedure or any of the procedures involving suspensive arrangements,
- (b) achieved, by a violation of customs regulations, the release of counterfeit or pirated goods, or their placement in a free customs zone or a free customs warehouse,
- (c) submitted an application for the release of counterfeit or pirated goods for re-export, or applied for their placement in a free customs zone or a free customs warehouse,
- (d) imported or exported counterfeit 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 goods disposal conditions set forth herein.

Part I *Offences*

Article 16 **Offences**

- (1) Any natural person, except for an entrepreneur, shall be deemed to have committed an offence if he or she has violated the law, no matter whether intentionally or because of his or her negligence or omission, in any of the manners described in Article 15 above.
- (2) An offence shall be punishable by the following sanctions:
 - (b) a fine,
 - (c) forfeiture of the goods in question.
- (3) Offences falling under the present Act shall be dealt with by customs offices.
- (4) Any of the offences referred to in Article 15, Subparagraphs (a) to (e), shall be punishable by a fine of up to CZK 100,000.00. Any offence referred to in Article 15, Subparagraph (f), shall be punishable by a fine of up to CZK 50,000.00.
- (5) The fine shall constitute a revenue of the state budget.

Article 17

- (1) A fine for any of the offences referred to in Article 15, Subparagraphs (a) to (e), may be levied within one year from the day the customs office learned that the goods in question

were counterfeit or pirated goods, but not later than six years from the day the violation or the failure to fulfil a duty in question occurred.

- (2) A fine for any offence referred to in Article 15, Subparagraph (f), may be levied within one year from the day the customs office learned that conditions applying to goods withheld in accordance with the present Act were violated, but not later than six years from the day the violation in question occurred.

Article 18
Payment of Fines

Any fine levied for an offence in accordance with the present Act shall be due and payable within thirty days from the day the ruling whereby it has been levied becomes effective and enforceable.

Article 19
Forfeiture of Goods

- (1) In addition to or instead of a fine, the goods belonging to the perpetrator and
- (a) used or intended to be used in committing the offence in question, or
 - (b) acquired as a result of the offence or obtained in exchange for the goods acquired as a result of the offence
- may be forfeited.
- (2) The forfeiture shall not be ordered if the value of the goods in question is conspicuously out of proportion to the nature and seriousness of the offence.
- (3) The state shall become the owner of forfeited goods.
- (4) The forfeiture of goods may be ordered only in compliance with the deadlines laid down in Article 17 above.

Article 20
Confiscation of Goods

- (1) If no forfeiture has been ordered as a sanction for an offence, the customs office shall nevertheless decide to confiscate such goods if
- (a) they belong to a perpetrator who cannot be prosecuted for the offence in question,
 - (b) they do not belong, in their entirety or in part, to the perpetrator of the offence in question,
- and the safety of persons or property or another matter of public interest requires so.
- (2) A ruling in a matter of confiscation of goods cannot be issued if more than six years have elapsed from the offence in question was committed.

Article 21
Jurisdiction

An offence shall be dealt with by the customs office in the jurisdictional territory of which it has been discovered, regardless that it may have been committed in the jurisdictional territory of a different customs office.

Article 22

Unless stipulated otherwise herein, offences and proceedings related thereto shall be governed by general offence legislation²⁴.

Part 2
Misdemeanours

Article 23
Misdemeanour

- (1) A legal entity or a natural person who is an entrepreneur shall commit a misdemeanour if acting in the manner described in Article 15 above.
- (2) Misdemeanours falling under the present Act shall be dealt with by customs offices.

Article 24
Sanctions for Misdemeanours

- (1) A misdemeanour shall be punishable by the following sanctions:
 - (a) a fine,
 - (b) forfeiture of the goods in question.
- (2) A fine may be levied in amounts up to
 - (a) CZK 10,000,000.00 for a violation of the duties referred to in Article 15, Subparagraphs (a) to (e),
 - (b) CZK 15,000,000.00 for an extensive, or repeated violation of the duties referred to in Article 15, Subparagraphs (a) to (e),
 - (c) CZK 4,000,000.00 for an extensive and repeated violation of the duties referred to in Article 15, Subparagraphs (a) to (e).
- (3) Acting as described in Article 15, Subparagraph (f), shall be punishable by a fine of up to CZK 1,000,000.00.

²⁴ Act No. 200/1990 Coll. (Offences Act), as amended by subsequent legislation.

- (4) The term "repeated" as used herein shall denote such a violation of duties which occurs within two years from the day the previous ruling whereby the legal entity in question was levied another sanction for violation of the present Act became effective and enforceable.
- (5) The term "extensive" as used herein shall denote such a violation of duties which involves goods infringing upon rights of the authorised person the customs value of which exceeds CZK 1,000,000.-; or, insofar as exported goods are concerned, the export price of which determined in accordance with a special act²⁵ exceeds CZK 1,000,000.00.
- (6) When determining the amount of the fine, the seriousness, nature, duration, and consequences of the illegal action(s) in question shall be taken into account.
- (7) In addition to or instead of a fine, the forfeiture of the goods in question may also be ordered.
- (8) The fine shall constitute a revenue of the state budget.

Article 25

- (1) A fine in accordance with Article 24, Paragraph (2), may be levied within one year from the day the customs office learned that the goods in question were counterfeit or pirated goods, but not later than six years from the day the violation or the failure to fulfil a duty in question occurred.
- (2) A fine for any offence referred to in Article 15, Subparagraph (f), may be levied within one year from the day the customs office learned that conditions applying to goods withheld in accordance with the present Act were violated, but not later than six years from the day the violation in question occurred.

Article 26

Payment of Fines

Any fine levied for a misdemeanour shall be due and payable within thirty days from the day the ruling whereby it has been levied becomes effective and enforceable.

Article 27

Forfeiture of Goods

A sanction consisting in the forfeiture of the goods in question may be imposed upon a perpetrator of a misdemeanour under The conditions set forth in Article 19 above shall apply *mutatis mutandis* to the imposition of a sanction consisting in forfeiture of goods. The forfeiture of goods may be ordered only in compliance with the deadlines laid down in Article 17 above.

Article 28

²⁵ Act No. 526/1990 Coll. (Prices Act), as amended by subsequent legislation.

Confiscation of Goods

- (1) If no forfeiture has been ordered as a sanction for an offence, the customs office may nevertheless decide to confiscate such goods if they do not belong to the perpetrator of the misdemeanour in question, and the safety of persons or property or another matter of public interest requires so.
- (2) A ruling in a matter of confiscation of goods cannot be issued if more than six years have elapsed from the offence in question.
- (3) The state shall become the owner of the confiscated goods.

Article 29 **Jurisdiction**

- (1) A misdemeanour shall be dealt with by the customs office in the jurisdictional territory of which the residence or seat of the person or entity in question is situated.
- (2) If the person or entity in question does not reside or have its seat in the territory of the Czech Republic, the misdemeanour shall be dealt with by the customs office in the jurisdictional territory of which it has been discovered.

CHAPTER VI DAMAGE RESPONSIBILITY WAIVER

Article 30

The state shall bear no responsibility whatsoever for any damage incurred by persons in connection with the adoption of measures under the present Act.

CHAPTER VII GENERAL AND TEMPORARY PROVISIONS

Article 31

The customs office shall arrange, at the expense of the perpetrator of an offence or misdemeanour,

- (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 these were placed on goods of a class different from that for which the trademark in question has been registered, or

- (c) other modifications or changes on forfeited or confiscated counterfeit or pirated goods so that they can be sold without the authorised person's rights being infringed.

Article 32

The costs as per Article 31 above shall become due and payable within thirty days from the delivery of the customs office's ruling stipulating their amount.

Article 33

- (1) If lodged in time, an appeal against a ruling imposing a sanction for an offence or a misdemeanour shall have a dilatory effect that cannot be waived.
- (2) Unless stipulated otherwise, an appeal against a ruling or decision of customs authorities shall not have any dilatory effect. For reasons worth considering, customs authorities may permit an appeal to have a dilatory effect, if justified rights of a person affected by the ruling or decision in question require so, and if such an action does not make the collection of fees and charges more difficult or is not prevented by a public interest matter.
- (3) If a compensation of costs determined in accordance with Article 7, Paragraph 4, which has been secured by a cash deposit as per Article 6 within the period of time stipulated in Article 7, Paragraph 4, is not paid voluntarily, it shall be paid from the cash deposit. The balance of the cash deposit, if any, shall be returned to the authorised person.

Article 34

Insofar as matters related to the payment and enforcement of compensations of costs incurred in connection with adopting a measure, costs efficiently and economically spent by customs offices which arise from their duty to keep goods under customs supervision, or costs of confiscation and destruction of goods are concerned, customs offices shall apply *mutatis mutandis* provisions of regulations dealing with the management and administration of taxes and fees²⁶.

Article 35

Unless stipulated otherwise herein, proceedings before customs authorities shall be governed by

- (a) provisions of regulations dealing with the management and administration of taxes and fees²⁷, insofar as the payment, collection, and exaction of fines are concerned,
- (b) the Administrative Code¹³ in all other matters.

²⁶ Articles 59, 73, and 73a of Act No. 337/1992 Coll.

²⁷ Act No. 337/1992 Coll., on the management and administration of taxes and fees, as amended by subsequent legislation.

Article 36

Customs authorities shall continue to adopt measures of customs authorities provided for by a special act²⁸ and adopted at the request of authorised persons submitted before the present Act becomes effective until December 31, 1999, except in cases where the authorised person requests the measure to be taken for a period of time which will have elapsed before that date.

PART TWO CHANGES OF AND AMENDMENTS TO THE COPYRIGHT ACT

Article 37

Act No. 35/1965 Coll., on literary, scientific, and art works (Copyright Act), as amended by Act No. 89/1990 Coll., Act No. 468/1991 Coll., Act No. 318/1993 Coll., Act No. 237/1995 Coll., and Act No. 86/1996 Coll., shall be amended as follows:

1. In Article 53a, Paragraph 1, the words "as well as goods designed to make graphic copies (copiers)" shall be inserted after the words "(blank recording carriers)".
2. Paragraphs 2 and 3 of Article 53a shall be deleted. The existing Paragraph 4 shall be renumbered as Paragraph 2.
3. Paragraph 2 of Article 53a shall read as follows:
"(2) Provisions of Paragraph 1 shall apply *mutatis mutandis* to export transactions."

PART THREE CHANGES OF AND AMENDMENTS TO THE TRADEMARKS ACT

Article 38

Act No. 137/1995 Coll., on trademarks (Trademarks Act), shall be amended as follows:

Paragraph 3 of Article 14 shall be deleted. The existing Paragraph 4 shall be renumbered as Paragraph 3.

PART FOUR CHANGES OF AND AMENDMENTS TO THE PENAL CODE

Article 39

Act No. 141/1961 Coll., on criminal law proceedings (Penal Code), as amended by Act No. 57/1965 Coll., Act No. 58/1969 Coll., Act No. 149/1969 Coll., Act No. 48/1973

²⁸ Article 53a of Act No. 35/1965 Coll.
Article 14, Paragraph 3, of Act No. 137/1995 Coll.

Coll., Act No. 29/1978 Coll., Act No. 43/1980 Coll., Act No. 159/1989 Coll., Act No. 178/1990 Coll., Act No. 303/1990 Coll., Act No. 558/1991 Coll., Act No. 115/1993 Coll., Act No. 292/1993 Coll., Constitutional Court Award No. 214/1994 Coll., Award No. 8/1995 Coll. of the Constitutional Court of the Czech Republic, Act No. 269/1994 Coll., Act No. 152/1995 Coll., and Act No. 150/1997 Coll. shall be amended as follows:

In Article 12, Paragraph 2, Subparagraph (g), the full stop at the end of the subparagraph shall be replaced by a comma, and three new subparagraphs, (h), (i), and (j), shall be added, which shall read as follows:

- ”(h) an infringement of rights to a trademark, business name, or protected appellation of origin as per Article 150 of the Penal Code, if the criminal act in question has been perpetrated in connection with the import, export, or transit of goods,
- (i) an infringement of industrial rights as per Article 151 of the Penal Code, if the criminal act in question has been perpetrated in connection with the import, export, or transit of goods,
- (j) an infringement of a copyright as per Article 152 of the Penal Code, if the criminal act in question has been perpetrated in connection with the import, export, or transit of goods.”

PART FOUR CHANGES OF AND AMENDMENTS TO THE PENAL CODE

Article 40

In the Act No. 140/1961 Coll., Penal Act, as amended by Act No. 120/1962 Coll., Act No. 53/1963 Coll., Act No. 56/1965 Coll., Act No. 81/1966 Coll., Act No. 148/1969 Coll., Act No. 45/1973 Coll., Act No. 43/1980 Coll., Legal Measure of the Federal Parliament No. 10/1989 Coll., Act No. 159/1989 Coll., Act No. 159/1989 Coll., Act No. 47/1990 Coll., Act No. 84/1990 Coll., Act No. 175/1990 Coll., Act No. 457/1990 Coll., Act No. 545/1990 Coll., Act No. 490/1991 Coll., Act No. 557/1991 Coll., Finding of the Constitutional Court of the Czech and Slovak Federal Republic of 4 September 1992 published under 93/1992 Coll., Act No. 290/1993 Coll., Act No. 38/1994 Coll., Finding of the Constitutional Court of the Czech Republic No. 91/1994 Coll., Act No. 152/1995 Coll., Act No. 19/1997 Coll., Finding of the Constitutional Court of the Czech Republic No. 103/1997 Coll., Act No. 253/1997 Coll., Act No. 92/1998 Coll., Act No. 112/1998 Coll., Act No. 148/1998 Coll., Act No. 167/1998 Coll., and Act No. 96/1999 Coll., words "imports, exports or" are inserted behind the word "who" in the Article 150, Paragraph 1.

PART SIX FINAL PROVISIONS

Article 41

Effect

The present Act shall take effect on the first day of the third calendar month following its declaration.
