

Chapter 15 of the Act on Customs Duties and Movement of Goods (Customs Act) of 21 December 2007 No. 119

Chapter 15 Detention of goods that violate intellectual property rights

Section 15-1 *Notice and detention of goods prior to a preliminary order*

(1) The customs authorities may, notwithstanding the duty of confidentiality, notify the rightholder if there is reasonable suspicion that the importation or exportation of goods subject to customs treatment will constitute an infringement of an intellectual property right as mentioned in the Dispute Act Section 28A-1 third paragraph first sentence. In addition to the grounds for the suspicion, the notification shall also, insofar as this information is known to the customs authorities, state the names and addresses of the sender and consignee, the origin of the goods, and the nature and number of the goods. The customs authorities may detain the goods for up to ten working days reckoned from the date notification was given.

(2) The consignee or its representative shall be notified when the customs authorities notify the rightholder or detain goods pursuant to subsection (1).

(3) This chapter applies correspondingly to the importation or exportation of goods that violate the Marketing Control Act Section 30, and to the importation or exportation of goods that violate the Marketing Control Act Sections 25 and 26, when the violation consists of copying another person's product, distinguishing mark, advertising materials or other produced items.

(4) The ministry may issue regulations to the effect that rights holders shall be encouraged to give the customs authorities information with a view to uncovering goods as mentioned in the first paragraph, and about who is to be notified on behalf of the rightholder.

Section 15-2 *Preliminary order*

(1) Preliminary orders to protect intellectual property rights pursuant to section 34-7 of the Civil Disputes Act shall state what goods the customs authorities are to detain and for how long the customs authorities shall seek to identify such goods. The court shall notify the customs authorities of any preliminary order. If the plaintiff is ordered to furnish the owner or consignee of the goods with security for possible compensatory damages, the customs authorities shall only be informed once the plaintiff has furnished such security. In its notification the court shall include any additional information about the goods of which it is aware and which can help the customs authorities to identify goods which are to be detained.

(2) Where the customs authorities have received notification from the district court requiring them to withhold specified goods from release, the customs authorities shall seek to identify such goods that are received for customs treatment.

(3) The Ministry may make regulations concerning the customs authorities' control of goods that are to be detained to protect intellectual property rights pursuant to this section.

Section 15-3 *Notification etc. in the event of detention of goods*

(1) Where the customs authorities have identified goods that are to be detained on the basis of a preliminary order, they shall immediately notify the district court, the plaintiff, the consignee of the goods and, if applicable, the person who represents the consignee vis-à-vis the customs authorities, or who has charge of the goods upon importation on behalf of the consignee. The notification shall state that the goods are detained in accordance with the preliminary order until the court or the plaintiff decides otherwise, or the court sends word that the measure has been lifted with final and legally enforceable effect or has lapsed. The notification to the plaintiff shall, insofar as it is available to the customs authorities, also contain information about the consignor, the consignee and the goods as mentioned in Section 15-1 first paragraph second sentence.

(2) When the court receives notification from the customs authorities pursuant to the first paragraph, it shall immediately set a short time limit for the plaintiff to bring action against the consignee of the goods regarding the claim that the preliminary order is intended to protect, unless the

court has already set such a time limit. If the preliminary order has been decided without an oral hearing being convened, the consignee of the goods and any other person affected by the preliminary order may request a subsequent oral hearing pursuant to the Dispute Act Section 32-8.

(3) The customs authorities may upon request order that the rightholder, the consignee or its representative shall be entitled, at the customs authorities' premises, to examine goods detained pursuant to Section 15-1 first paragraph, or on the basis of a preliminary order. The customs authorities may also decide that examples of such goods shall be handed over to the rightholder for examination. Goods handed over to the rightholder shall be returned as soon as the examination is complete or the detention has lapsed. The rightholder is responsible for any damage to the goods that arises in connection with examinations pursuant to this subsection.

(4) The Ministry may issue regulations concerning the customs authorities' notification of measures to protect intellectual property rights pursuant to this section.

Section 15-4 *Declaration, responsibility for storage dues, the destruction of goods etc.*

(1) The detention of goods by the customs authorities pursuant to Section 15-1 first paragraph or on the basis of a preliminary order in no way affects the duty to declare the goods and to pay customs duties and charges. The rightholder is liable for the cost of storage dues during the period the goods are detained pursuant to Section 15-1 first paragraph or on the basis of a preliminary order, and shall be notified in accordance with the Tax Payment Act Section 14-10 second paragraph, in the same way as the consignee for the goods, before the goods can be subject to enforced sale because of failure to pay storage dues.

(2) Goods may not be forcibly sold pursuant to Sections 4-2, 4-27 and 4-32 as long as they are detained pursuant to Section 15-1 first paragraph or on the basis of a preliminary order. The same applies if it is confirmed by a judgment or it follows from a binding agreement between the rightholder and the consignee or its representative that the goods constitute an infringement of an intellectual property right.

(3) The customs authorities may arrange for the destruction of goods that are detained, or take other measures concerning the goods, when this follows from a judgment or when the consignee or its representative has consented to this. The rightholder is liable in relation to the customs authorities for costs incurred by the customs authorities in connection with the destruction of goods or other measures concerning the goods.

Section 15-5 *Lifting and lapse of a preliminary order*

(1) Where the court lifts a preliminary order or adopts a decision to the effect that the order has lapsed, it shall inform the customs authorities thereof once the decision is legally enforceable. In cases as mentioned in section 34-6 of the Civil Disputes Act the customs authorities may request the court to make a decision to the effect that the order has lapsed.

(2) The Ministry may make regulations concerning the lifting and lapse of preliminary orders pursuant to this section.