
**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**

POLAND

The present document reproduces the text¹ of the Regulation of the Council of Ministers of 2 February 1999 on the procedure and operating principles for Customs Authorities for withholding goods in case of suspected violation of provisions on protection of intellectual, commercial and industrial property, as notified by Poland under Article 63.2 of the Agreement (see document IP/N/1/POL/2).

**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**

POLOGNE

Le présent document contient le texte¹ du Règlement du Conseil des ministres du 2 février 1999 sur la procédure et les principes devant être suivis par les Autorités douanières pour la détention de marchandises dont elles soupçonnent qu'elles portent atteinte aux dispositions sur la protection de la propriété intellectuelle, commerciale ou industrielle, notifié par la Pologne au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/POL/2).

**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**

POLONIA

En el presente documento se reproduce el texto¹ de la Reglamentación del Consejo de Ministros de 2 de febrero de 1999 sobre el procedimiento y los principios operativos de la retención de mercancías por las autoridades aduaneras en caso de presunta violación de las disposiciones sobre la protección de la propiedad intelectual, comercial e industrial, notificada por Polonia de conformidad con el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/POL/2).

¹ Distributed in English only. The text of this law 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 de cette loi, dans sa langue d'origine, au Secrétariat de l'OMC./Distribuido en inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC los textos de estas leyes en su idioma original.

**Regulation of the Council of Ministers
of February 2nd, 1999
on the procedure and operating principles for Customs Authorities for withholding goods
in case of suspected violation of provisions on protection of intellectual, commercial and
industrial property.**

The following provisions shall be adopted on the ground of art. 57 § 3 of the Customs Code of January 9th, 1997 (Journal of Law No. 23 item 117, No. 64 item 407, No. 121, item 770 and No. 157, item 1026 and No. 160, item 1084 and Journal of Law of 1998 No. 106, item 668 and No. 160, item 1063):

§ 1.

1. Definitions used in this Regulation signify:

- 1) counterfeit goods:
 - a) goods, including the packaging thereof, which carry without authorisation of a right holder, a trade mark identical with a registered trade mark, or with a trade mark which cannot be in its essential aspects distinguished from such trade mark,
 - b) any trademark symbol, placed in particular on a brochure, instruction of use, guarantee document or sticker, presented together with the goods or separately, in the same circumstances as the goods referred to in (a),
 - c) packaging materials bearing, without authorisation of a right holder, the trade mark in the same circumstances as the goods referred to in (a)
 - 2) pirated goods – goods which are or embody copies made without the consent of the holder of the copyright or related rights or of the holder of an industrial design right, registered or not, where making of such copies constitutes an infringement of the rights.
 - 3) right holder – owner of the intellectual, commercial or industrial property rights or a person authorised to use these rights.
2. Any mould or matrix which is specifically designed or adopted for the manufacture of counterfeit trade marks for counterfeit goods or for the manufacture of counterfeit goods as well as for the manufacture of pirated goods, shall be treated as counterfeit or pirated goods.

§ 2.

1. A right holder or a person authorised to act on behalf of the right holder, called hereinafter “the Applicant”, may submit a written application to the President of Central Board of Customs for the protection of intellectual, commercial or industrial property.
2. The Application referred to in point 1 shall include in particular:
 - 1) information on the Applicant;
 - 2) information on the right holder;
 - 3) description of goods which is a subject to protection, allowing to identify the goods and including the following data:
 - a) code number of Customs Tariff,
 - b) sending country,
 - c) country of production,
 - d) data on the producer,
 - 4) assumed customs value of the goods to be withheld,
 - 5) requested protection period.
3. The Application shall be appended with:
 - 1) an original or an authorised copy of a proof of ownership of intellectual, commercial or industrial property rights;
 - 2) an authorisation to request for the protection of intellectual, commercial or industrial property rights, if the applicant is not identical with owner of these rights,
 - 3) evidence to allow for the identification of the goods subject to the protection of intellectual, commercial or industrial property rights.

4. The Application may be supplied with information on the import into the Polish customs territory of counterfeit or pirated goods.
5. The Application specified in point 1 shall be submitted in writing; the draft of the Application is appended to this Regulation.

§ 3.

1. Applications specified in § 2 shall be decided upon by the President of Central Board of Customs.
2. Decision referred to in point 1, approving an application for the protection of intellectual, commercial or intellectual property ownership rights, should include in particular:
 - 1) specification of the object of protection,
 - 2) period of protection,
 - 3) the amount of security,
 - 4) the period when the security should be delivered.
3. The period referred to in point 2 subpoint 2 cannot be longer than 12 months; this period may be prolonged for no longer than the next 12 months.

§ 4.

1. The security referred to in § 3 point 2 subpoint 3 is used to cover costs related to customs custody of goods withheld by customs authorities by the time of ascribing to them customs purpose and to secure claims of persons whose rights were violated by withholding the goods.
2. The security shall be delivered in the form envisaged by Article 199 §1 point 1 or 2 of the Customs Code (Journal of Law No. 23, item 117, No. 64, item 407, No. 121, item 770, No. 157, item 1026 and No. 160, item 1084 and the Journal of Law of 1998 No. 106, item 668 and No. 160, item 1063), hereinafter called as "the Customs Code".
3. The amount of security shall be established on the level of 10% of assumed customs value of the withheld goods, however, not less than 5.000 EURO.
4. In justified special cases, the President of Central Board of Customs may establish the security on the level lower than specified in point 3. or to resign from the obligation to request it.

§ 5.

If the Applicant fails to increase the security mentioned in § 3 point 2 subpoint 3, by the specified date, the President of the Central Board of Customs shall issue the decision on expiration of the decision on withholding goods.

§ 6.

1. In instances, when following the withholding of the goods it proves that the amount of security is not sufficient to cover costs of § 4 point 1, the customs authority, by way of a decision, may oblige the Applicant to increase the security to the level of expected costs and to specify the date of increasing the security.
2. If Applicant fails to increase the security by the date referred to in point 1, the customs authority shall release the withheld goods.

§ 7.

1. The customs authority shall provide written information on withholding the goods to the person who introduces or removes goods from the Polish customs territory and to the Applicant.
2. The customs authority may notify the Applicant, at his request, of the name and address of a person who introduces or removes goods from the Polish customs territory and the consignee so as to enable the Applicant to provide the authorities competent to launch the proceedings.

§ 8.

1. If, within a period not exceeding 10 working days after the Applicant has been served notice of the suspension the Applicant failed to provide customs authorities with an appropriate provisional order, issued by the court to secure the Applicant's claims or a proper order issued in criminal proceedings, the customs authority shall release the withheld goods.

2. This period may be extended by customs authorities following a written application, for no longer than 10 working days, and only in the instance of the court's failure to consider the motion to issue a provisional order or a proper order which is issued in criminal proceedings.

§ 9.

1. If, in the course of customs control of the goods, it appears evident to the customs authority that the goods are counterfeited or pirated, may withhold the goods for 3 working days to enable the right holder to submit an application referred to in § 2 point 1. If the right holder fails to submit an application, the customs authority shall release the withheld goods.
2. The period mentioned in point 1 shall be counted from the day of delivery of the notice of the suspension.
3. Point 1 shall apply only if the right holder is known to the customs authority.
4. § 8 shall duly apply.

§ 10.

In order to allow the protection of intellectual, commercial or industrial property, a customs authority may provide the Applicant, following a notice to the person who introduces goods or removes them from Poland's customs territory, with a sample of withheld goods in order to conduct tests to determine the characteristics of withheld goods.

§ 11.

1. The part of security exceeding costs related to customs custody shall be returned no later than in 3 months from the last day of the period of protection of intellectual, commercial or industrial property rights, unless it was used before the end of this period to secure claims specified in § 4 point 1.
2. The security shall be returned in one month from the last day of the protection period referred to in point 1 in instances when customs authorities covered no costs related to customs custody.

§ 12.

Provisions of the Regulation shall not be applied to goods exempt from duty on the ground of Article 190 § 1 points 1 - 3 of the Customs Code.

§ 13.

The Regulation of the Council of Ministers of December 19th, 1997 on the procedure and operating principles for Customs Authorities for withholding goods in instances of suspected violation of provisions on protecting intellectual, commercial and industrial property (Journal of Law No. 158, item 1049) is hereby repealed.

§ 14.

This Regulation shall come into force after 14 days after the day of its publication.

J. Buzek,
President of the Council of Ministers

Annex to the Ordinance of the Council of Ministers
of February 2nd, 1999 (item 141)

Please type.
Read Instructions before filling in.

APPLICATION FOR THE PROTECTION OF INTELLECTUAL, COMMERCIAL AND INDUSTRIAL PROPERTY OWNERSHIP RIGHTS	
1. President of Central Board of Customs ul. Świętokrzyska 12 00-916 Warszawa	1.1 Stamp of Central Board of Customs and date of receipt 1.2 Reference number of the application
2. APPLICANT ((name and surname or full corporate name of the applicant)) street, No Zip Code City Country (tel./fax)	
2.1 REGON registration No..... 2.2 NIP tax registration No	
3. PERSON WHOSE RIGHTS ARE TO BE PROTECTED ((name and surname or full corporate name of the applicant)) street, No Zip Code City Country (tel./ fax)	
3.1 REGON registration No..... 3.2 NIP tax registration No	
4. I apply herewith for the protection of: 4.1 Copyright and related rights 4.2. Trademarks	
5.1 Name of the goods – PCN customs code..... – Sent from (country name)..... – Manufactured in (country name)..... – Manufacturer's country name.....	5.2 Name of the goods – PCN customs code..... – Sent from (country name)..... – Manufactured in (country name)..... – Manufacturer's country name.....
5.3 Name of the goods – PCN customs code..... – Sent from (country name)..... – Manufactured in (country name)..... – Manufacturer's country name.....	5.4 Name of the goods – PCN customs code..... – Sent from (country name)..... – Manufactured in (country name)..... – Manufacturer's country name.....

6. Information on pirated goods or goods marked with counterfeit trade mark	
6.1 Sent from (country name)	
6.2 Manufactured in (country name).....	
6.3 Name of manufacturer	
6.4 Importer/Exporter..... (name and address of the seat, country)	
6.5 Recipient	
(name and address of the seat, country)	
6.6 Means of transport	
6.7 Border crossing.....	
6.8 Expected date of submitting goods for customs clearance.....	
6.9 Additional information.....	
7. Assumed customs value	
8. Period of Protection	
9. Additional information	
10. Remarks by Customs Authorities	
11. Contact person	
tel.	
12. (Date and place of issue) (Name and surname) (Signature of the Applicant)	

Enclosures:

1. Certificate of the ownership of intellectual, commercial or industrial property rights;
2. Authorisation to request the protection, should the Applicant be not identical with the holder of rights;
3. Justification of reasons for submitting the application;
4. Proofs allowing for identification of goods to be protected;
5. Receipt for the fee for the consideration of the application;
6. Additional information in importing pirated goods or goods marked with counterfeit trade mark into Polish customs territory.

Please note

1. Customs authorities are not responsible for damage done during the period of storing the goods, unless they are guilty of the said damage.
2. The Applicant is obliged to cover the costs of storing the goods.
3. Any person providing false data and information in this Application shall be subject to penal responsibility under art 233 of the Penal Code.

Instruction

1. Application shall be typed.
2. Please fill in all the numbered boxes, excluding No 10. If you intend not to enter information in a box, mark it with a dash.
3. Should there be not enough space in the boxes, please add data and information on a separate sheet of paper, marked with number of the box to which they refer.