

Borders Enforcement – TURKEY

Legislation

In Turkey the Custom's enforcement regime depend on the Laws relevant to Customs Regime and Intellectual & Industry Property Laws. These regulations refer to international Agreements such as TRIPS and WTO.

1. Customs Code No: 4458

Turkish Customs Code and related Regulations impose protection of intellectual and industrial property rights.

Article 57 regulates the main principles of the measures.

Customs may act upon request of the right holder, Public prosecutor or any third party in case of a criminal case.

The Procedure According to Customs Code and Regulations.

- a. The Customs offices shall detain or suspend the customs procedures of the goods infringing the authorizations of the right holder, upon the request of the right holder or his representative.
- b. The decision to detain or suspend shall be notified to the right holder or his representative and to the declarant.
- c. In cases where no request has yet been made at the Customs Office, and where solid evidence is available showing that the goods in question are in breach of intellectual and industrial property rights; with a view to ensure the valid application of the right holder, these goods may be subjected to ex officio customs detention for a duration of **three business days** or the Customs procedures of the goods may be suspended by the Customs offices.
- d. Where no interim injunction is imposed by the right holder within three business days for the perishable goods and within **ten business days** for other goods as from the notification of the suspension or detention decision of the Customs office to the right holder, the provisions of the customs procedure under which the declarant lodged his request, shall apply.
- e. In case of a justifiable excuse and upon the request of the right holder, the relevant customs office may grant an additional time up to **ten business days**.
- f. Goods whose customs procedures have been suspended or that have been detained by the relevant customs office, shall be destroyed or disposed of, through the alteration of their essential characters in accordance with the decision of the duly empowered court.

g. without the decision of the court regarding the infringement of the intellectual and industrial rights, the Customs authorities may permit the destruction of the goods whose customs procedures have been suspended or that have been detained by the Customs authorities, under Customs control and within facilitated destruction.

The Customs shall wait for a court order (Criminal or civil) in order to decide the aftermath of the seized products

2. Law No. 5846 on Intellectual and Artistic Works

Article 77 of the Law related to Protection of Intellectual Property and Artistic Works enables starting precautionary measures Precautionary Measures and Provisional Seizure at the Customs

Upon the request of the person whose rights have been violated or are under threat of violation or the collecting societies, the civil court may order the other party, before or after the commencement of the proceedings on the merits of the case, to perform certain acts or to refrain from performing them or to open or close the premises where the act is being committed, or may order as a precautionary measure the preservation of the reproduced copies of a work or molds and other similar devices for reproduction exclusively enabling the manufacture of such copies, if such an order is deemed necessary for the prevention of a substantial injury or an instantaneous danger or accomplished facts or any other reason and if the claims asserted are considered to be strongly probable. It shall be stated in the order that non-compliance with the order shall result in criminal consequences as provided in Article 343 of the Law on Execution and Bankruptcy. The provision of Article 57 of the Customs Law no. 4458 shall be applied during the import or export of the copies, which require sanctions in case an infringement of rights is likely to occur. The procedure regarding the seizure of such copies by the Customs Authorities shall be implemented in accordance with the related provisions of the Customs Regulation.

3. Decree Law No 551 Pertaining to protection of Patents

Article 152 of Turkish Patent Law enables the measures at the Borders and Customs. According to the very provision of the Decree law, Precautionary measures shall be in nature to enable of securing fully the effectiveness of the judgment and particularly provide injunction to seize within the borders of Turkey, wherever they are seen/found including the customs, free ports or free trade areas and keep in custody the goods produced or imported

in infringement of rights conferred by the patent or means used in implementing the patented process.

4. Decree Law No 554 Pertaining to protection of Industrial Designs

Decree Law related to Protection of Industrial Designs enables seizure at the borders as a part of precautionary measures.

Article 64 states that Precautionary measures shall be in nature to enable securing of the judgement and particularly provide injunction to arrest within the borders of Turkey, including the customs, the free ports or the free trade areas and keep in custody the produced or imported goods which have infringed the design rights,

In addition to this provision, Article 66 clearly and namely states the Seizure at the Borders as a part of design Protection. Customs authorities, while being exported or imported shall withhold as a precautionary measure the products which have infringed as fraudulent copies the rights of the design right holder.

The withholding measure employed by the customs authorities shall cease to have effect if proceedings are not instituted at the special court or a preventive injunction is not obtained from the court within **ten days** of the withholding.

5. Decree Law No 556 Pertaining To protection of Trademarks

Decree Law related to Protection of trademarks enables seizure at the borders as a part of precautionary measures.

Article 77 states that Precautionary measures shall be in nature to enable securing of the judgement and particularly provide injunction to arrest within the borders of Turkey, including the customs, the free ports or the free trade areas and keep in custody the produced or imported goods which have infringed the design rights,

In addition to this provision, Article 79 clearly and namely states the Seizure at the Borders as a part of design Protection. Customs authorities, while being exported or imported shall withhold as a precautionary measure the products which have infringed as fraudulent copies the rights of the design right holder.

The withholding measure employed by the customs authorities shall cease to have effect if proceedings are not instituted at the special court or a preventive injunction is not obtained from the court within **ten days** of the withholding.

Jurisdiction

Different types of Courts may have jurisdiction depending on the subject matter of the dispute, in particular:

- *Intellectual and Industrial Property Courts (In Istanbul, Ankara and Izmir Provinces)*
- *Courts of First Instance in the Cities where no Intellectual and Industrial Property Court is not founded;*
- *Court of Appeal (Istinaf in Turkish) .*

Domestic industry Requirement

There is no domestic industry requirement in Turkish law.

Parties

Different parties are involved, i.e.:

- The right-holder;
- The Customs;
- The owner or of the suspected goods or their Destinee and representatives, such as the declarant;
- The Public Prosecutor in case of criminal complaint.

Jury

There are no juries for these types of proceedings.

Procedure

With regard to the detention of goods, the following general framework is reminded:

- the right-holder file an application in writing or online through the website of Ministry of Customs and Trade (www.gtb.gov.tr) to request a surveillance by the Customs of possible further infringements of one of its IP right;
- after granting the surveillance, the Customs may report, on a case by case basis, possible and suspected infringement acts;

- if the right-holder confirms the infringement, the suspected goods are detained by the Customs during ten business days. This request can be prolonged upon reasonable grounds.
- the right-holder has to submit a court order (preliminary injunction) from the civil court or from a criminal court.

As cited above in case of criminal cases the customs may act ex-officio or with the order of the public prosecutor.

Remedies

In Turkey the damages suffered by the right holder including the expenses made during the process of seizure of the goods can be subject to compensation. The codes related to protection of intellectual and industrial property rights enable the right holder to ask for compensation of moral and material damages as well as the expenses and the legal standard attorney fee.

Statutory Deposit of right holder

This option is very common in Turkish laws especially for the preliminary injunction decisions given by the civil courts. The law does not allow these measures and cautions to be a “punishment” for the defendant, henceforth the plaintiff is asked for a deposit at the stage of commencing a civil lawsuit.