

## Intellectual Property - Ukraine

### New Transit Goods Regulations Protect Rights Holders

Contributed by [Konnov & Sozanovsky](#)

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On January 19 2006 the *Verkhovna Rada* (Parliament) of Ukraine ratified a resolution of the Council of the Heads of the Commonwealth of Independent States on the rules relating to the inspection of transit goods by customs authorities.

The rules establish general provisions governing the registration with a customs office of goods containing IP rights and the seizure and investigation of potentially infringing goods. The holder of IP rights in a particular product can register it with a customs office in order to prevent the importation of infringing goods. A similar system has existed in Ukraine since 2001, when regulations on the registration and transfer of goods were approved by the Cabinet of Ministers. The recently ratified resolution is largely consistent with the existing system, but has some distinctive features.

One of the peculiarities of the new rules is that a party can add IP rights held by another party to the protected register, provided that the central customs offices of both parties so agree.

In order to register the IP rights in an product with a customs office, the holder must make a deposit or issue a letter of guarantee to cover the cost of compensation in cases where goods are detained incorrectly, whereas under the Ukrainian system only a letter of guarantee is required or accepted.

The new regulations provide that, if counterfeit elements are detected in a consignment of goods, the customs office must stop the consignment, but may not detain it for longer than 20 working days or 31 calendar days. Within this term the rights holder must prove that the consignment is illegal by obtaining a decision from the competent authority which confirms that the goods are counterfeit. If the rights holder cannot provide the necessary evidence within the term, the customs office must approve the importation of the goods.

The corresponding provisions in the existing Ukrainian regulations differ slightly. The customs office must stop the suspect goods and may hold them for up to 15 days; this term may be extended by a further 15 days. Within this term the rights holder must submit a claim to a court and obtain a court resolution to commence proceedings. If such a resolution is obtained, the customs office must detain the goods until the court issues its decision; there is no time limit for the release of the goods.

*For further information on this topic please contact [Galina Mykolenko](#) at Konnov & Sozanovsky by telephone (+380 44 490 5400) or by fax (+380 44 490 5490) or by email ([info@konnov.com](mailto:info@konnov.com)).*

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