

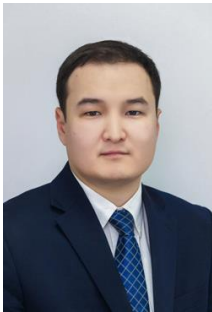
LEGAL ALERT

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New Customs Code of the Republic of Kazakhstan



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As of January 1, 2018 the new Customs Code entered into force in Kazakhstan. Besides various amendments related to the customs clearance and control measures, the new Customs Code was amended in the part of IP protection.

1. Form of application

In previous version of the Customs Code the customs application had to be filed in a free form (there was no specific template) and the Code regulated only requirements to information that a customs application shall contain. Now the application is to be done on the basis of mandatory template, which is currently being approved. Meanwhile, it is possible to file customs applications in a free form.

2. Confirmation of rights

The previous version of the Customs Code required submitting a document that would confirm the rights on a trademark or copyright. Moreover, it was specified that such a document shall be either certificate of registration of IP objects, license agreement, extract from the Kazakhstani Trademark Register, or letter confirming the status of trademark or copyright issued by the Kazakhstan Patent Office.

Now the Customs Code allows customs officers to also accept the extracts

from international trademark registrations and any other document that confirm the right on a trademark or copyright.

3. A new document is required Please note that the Customs Code now contains a rule whereby the customs would request to submit a confirmation of illegal import of goods containing a trademark or copyright into the Eurasian Economic Union.

Such a document could, for example, be a court decision with regard to certain import of infringing goods. This provision particularly means that new customs applications cannot be satisfied unless there is a document confirming the infringing import of goods. In many cases such confirmation can be hardly obtained before inclusion of the goods in the Customs Register or in cases when it is necessary to take preventive measures of such customs protection of IP rights.

It is worth to mention that currently the Customs Office accepts the confirmation of illegal import made in any country of Eurasian Economic Union. Moreover, the practice may come to the point when the Customs Office would also accept not only the court decisions on illegal import of goods, but also the court decisions on illegal offering and sale of goods on the internal market.

Currently is also discussed a possibility to provide other documents confirming the illegal import of goods, including for instance the copies of customs declarations, commercial invoices, cease and desist letters to infringers and their answers, and other documents.

Nevertheless, if the trademarks are already included into the Customs Register it is highly recommended to keep them in the Customs Register and timely renew the customs watch term, otherwise it might be problematic to re-include the trademarks in absence of the relevant document confirming the infringement. If the trademarks are not included into the Customs Register it is recommend to start preparing the confirmations of illegal import beforehand, and Bolotov & Partners will be happy to assist with such. In practice this amendment critically influences the process of inclusion of trademarks into the Customs Register and makes this process hardly feasible. Bolotov & Partners would be appealing this amendment with a request to cancel the new requirement through the

court, and invites all interested parties to join the appeal.

4. Photos are required

The photos of genuine and infringing goods shall be attached to the customs application. Under the previous Customs Code it was sufficient to provide detailed information about the genuine goods, which allowed easy identification of infringing goods. Now it is necessary to provide the photos of infringing goods, which are either counterfeit or parallel import.

5. Term of making a decision on customs application is reduced

The previous version of Customs Code provided the Customs Office with 30 days for considering the customs applications with a possibility to extend the terms up to three months. Now the Customs Office would have 20 business days for a decision but the possibility to extend the terms is reduced down to 20 business days.

6. Defined the term for request for renewal of the Customs watch The new Customs Code defined the exact term within which the right holder shall file a request to renew the customs watch. Now it is 15 days prior to expiration of the customs watch term.

7. Customs watch renewal process can be extended for two months If the trademark registration was renewed but the Patent Office or WIPO failed to timely issue the renewal document, the Customs Office now can wait for up to two months when the right holder provides the trademark renewal document. During this term the customs detentions are not made, and the customs registration for a trademark gets the On-Hold status. If the right holder provides the trademark renewal document within two months then the customs watch can be renewed without a need to re-include the trademarks or copyright.

8. Customs detention term can be extended for ten business days only in case of filing a civil lawsuit or starting an administrative or criminal case Normal ten business days term for customs detention can be now extended for additional ten business days only if the right holder proves to Customs Office filing of a civil lawsuit against importer, or if the law enforcing agency arrests the detained goods. In practice this measure should allow avoiding groundless keeping the goods detained at warehouses.

Zhanat Nurmagambetov -inta.org, April, 2018