



EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

**EUROPEAN COMMUNITIES (CUSTOMS ACTION AGAINST GOODS
INFRINGING INTELLECTUAL PROPERTY RIGHTS)
(APPLICATION) ORDER 2005**

Draft laid before Tynwald15th February 2005

Approved by Tynwald16th March 2005

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Council of Ministers by Section 2A of the European Communities (Isle of Man) Act 1973^(a), and of all other powers enabling them in that behalf, the following Order is hereby made :-

Citation and commencement

1. This Order may be cited as the European Communities (Customs Action Against Goods Infringing Intellectual Property Rights) (Application) Order 2005, and shall come into operation on the day on which it is made.

Application of Community instruments

2. (1) Subject to paragraph (2) and to the modifications set out in the Schedule, Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights^(b), shall apply as part of the law of the Island to the same extent as in the United Kingdom.

(2) This Order does not apply in respect of provisions that apply as part of the law of the Island under section 2(1) of the European Communities (Isle of Man) Act 1973.

Price Band: A

Price: £1.15

^(a) 1973 c.14

^(b) OJ L 196, 2.8.2003, p.7

SCHEDULE

LIST OF MODIFICATIONS TO THE APPLIED INSTRUMENT

Council Regulation (EC) No 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights

1. Throughout the instrument, references to “Member State”, “Member States” or “the Community” shall be construed as including the Isle of Man. Any reference to a “competent authority”, “competent authorities”, “customs authority”, “customs authorities”, “competent customs department”, or “customs office” shall be construed as including the Isle of Man Treasury.
2. Omit Article 22.
3. In Article 23, from the first sentence omit the words “On the basis of the information referred to in Article 22”.
4. Omit Article 25.

Made 16th March 2005



Chief Secretary

EXPLANATORY NOTE
(This is not part of the Order)

Council Regulation (EC) 1383/2003 deals with the actions that Community customs authorities may take when dealing with goods that they suspect may infringe a right-holder’s intellectual property rights.

This Order applies those provisions of Council Regulation 1383/2003 that are not already applicable to the Island under the Island’s Protocol 3 relationship with the European Community to the Isle of Man as part of the law of the Island.

It is believed that Council Regulation (EC) 1383/2003 may be very largely applicable under Protocol 3, and the Island therefore has an obligation to implement it. However, as the Regulation might be seen primarily as either a customs measure or an intellectual property measure, this Order is made under S.2A of the European Communities (Isle of Man) Act 1973 to ensure that Island’s customs authorities’ legal power to enforce the measures set out in the Regulation are not open to challenge.

A copy of Regulation (EC) 1383/2004 as modified is included in an Annex, but the Annex does not form part of the Order.

ANNEX

Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) To improve the working of the system concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights introduced by Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods⁽¹⁾, conclusions should be drawn from experience of its application. In the interests of clarity, Regulation (EC) No 3295/94 should be repealed and replaced.
- (2) The marketing of counterfeit and pirated goods, and indeed all goods infringing intellectual property rights, does considerable damage to law-abiding manufacturers and traders and to right-holders, as well as deceiving and in some cases endangering the health and safety of consumers. Such goods should, in so far as is possible, be kept off the market and measures adopted to deal effectively with this unlawful activity without impeding the freedom of legitimate trade. This objective is consistent with efforts under way at international level.
- (3) In cases where counterfeit goods, pirated goods and, more generally, goods infringing an intellectual property right originate in or come from third countries, their introduction into the Community customs territory, including their transshipment, release for free circulation in the Community, placing under a suspensive procedure and placing in a free zone or warehouse, should be prohibited and a procedure set up to enable the customs authorities to enforce this prohibition as effectively as possible.
- (4) Customs authorities should also be able to take action against counterfeit goods, pirated goods and goods infringing certain intellectual property rights which are in the process of being exported, re-exported or leaving the Community customs territory.
- (5) Action by the customs authorities should involve, for the period necessary to determine whether suspect goods are indeed counterfeit goods, pirated goods or goods infringing certain intellectual property rights, suspending release for free circulation, export and re-export or, in the case of goods placed under a suspensive procedure, placed in a free zone or a free warehouse, in the process of being re-exported with notification, introduced into the customs territory or leaving that territory, detaining those goods.
- (6) The particulars of the application for action, such as its period of validity and form, need to be defined and harmonised in all Member States. The same applies to the conditions governing the acceptance of applications by the customs authorities and the service designated to receive, process and register them.
- (7) Even where no application has yet been lodged or approved, the Member States should be authorised to detain the goods for a certain period to allow right-holders to lodge an application for action with the customs authorities.
- (8) Proceedings initiated to determine whether an intellectual property right has been infringed under national law will be conducted with reference to the criteria used to establish whether goods produced in that Member State infringe intellectual property rights. This Regulation does not affect the Member States' provisions on the competence of the courts or judicial procedures.

- (9) To make the Regulation easier to apply for customs administrations and right -holders alike, provision should also be made for a more flexible procedure allowing goods infringing certain intellectual property rights to be destroyed without there being any obligation to initiate proceedings to establish whether an intellectual property right has been infringed under national law.
- (10) It is necessary to lay down the measures applicable to goods which have been found to be counterfeit, pirated or generally to infringe certain intellectual property rights. Those measures should not only deprive those responsible for trading in such goods of the economic benefits of the transaction and penalise them but should also constitute an effective deterrent to further transactions of the same kind.
- (11) To avoid disrupting the clearance of goods carried in travellers' personal baggage, it is appropriate, except where certain material indications suggest commercial traffic is involved, to exclude from the scope of this Regulation goods that may be counterfeit, pirated or infringe certain intellectual property rights when imported from third countries within the limits of the duty-free allowance accorded by Community rules.
- (12) In the interests of this Regulation's effectiveness, it is important to ensure the uniform application of the common rules it lays down and to reinforce mutual assistance between the Member States and between the Member States and the Commission, in particular by recourse to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ⁽²⁾.
- (13) In the light of the experience gained in the implementation of this Regulation, inter alia, consideration should be given to the possibility of increasing the number of intellectual property rights covered.
- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (15) Regulation (EC) No 3295/94 should be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I SUBJECT MATTER AND SCOPE

Article 1

1. This Regulation sets out the conditions for action by the customs authorities when goods are suspected of infringing an intellectual property right in the following situations:
 - (a) when they are entered for release for free circulation, export or re-export in accordance with Article 61 of Council Regulation (EC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽⁴⁾;
 - (b) when they are found during checks on goods entering or leaving the Community customs territory in accordance with Articles 37 and 183 of Regulation (EEC) No 2913/92, placed under a suspensive procedure within the meaning of Article 84(1)(a) of that Regulation, in the process of being re-exported subject to notification under Article 182(2) of that Regulation or placed in a free zone or free warehouse within the meaning of Article 166 of that Regulation.
2. This Regulation also fixes the measures to be taken by the competent authorities when the goods referred to in paragraph 1 are found to infringe intellectual property rights.

Article 2

1. For the purposes of this Regulation, "goods infringing an intellectual property right" means:

(a) "counterfeit goods", namely:

- (i) goods, including packaging, bearing without authorisation a trademark identical to the trademark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark-holder's rights under Community law, as provided for by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark⁽⁵⁾ or the law of the Member State (*construed as including the Isle of Man*) in which the application for action by the customs authorities is made;
- (ii) any trademark symbol (including a logo, label, sticker, brochure, instructions for use or guarantee document bearing such a symbol), even if presented separately, on the same conditions as the goods referred to in point (i);
- (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);

(b) "pirated goods", namely goods which are or contain copies made without the consent of the holder of a copyright or related right or design right, regardless of whether it is registered in national law, or of a person authorised by the right-holder in the country of production in cases where the making of those copies would constitute an infringement of that right under Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs⁽⁶⁾ or the law of the Member State (*construed as including the Isle of Man*) in which the application for customs action is made;

(c) goods which, in the Member State (*construed as including the Isle of Man*) in which the application for customs action is made, infringe:

- (i) a patent under that Member State's (*construed as including the Isle of Man*) law;
- (ii) a supplementary protection certificate of the kind provided for in Council Regulation (EEC) No 1768/92⁽⁷⁾ or Regulation (EC) No 1610/96 of the European Parliament and of the Council⁽⁸⁾;
- (iii) a national plant variety right under the law of that Member State (*construed as including the Isle of Man*) or a Community plant variety right of the kind provided for in Council Regulation (EC) No 2100/94⁽⁹⁾;
- (iv) designations of origin or geographical indications under the law of that Member State (*construed as including the Isle of Man*) or Council Regulations (EEC) No 2081/92⁽¹⁰⁾ and (EC) No 1493/1999⁽¹¹⁾;
- (v) geographical designations of the kind provided for in Council Regulation (EEC) No 1576/89⁽¹²⁾.

2. For the purposes of this Regulation, "right-holder" means:

- (a) the holder of a trademark, copyright or related right, design right, patent, supplementary protection certificate, plant variety right, protected designation of origin, protected geographical indication and, more generally, any right referred to in paragraph 1; or
- (b) any other person authorised to use any of the intellectual property rights mentioned in point (a), or a representative of the right-holder or authorised user.

3. Any mould or matrix which is specifically designed or adapted for the manufacture of goods infringing an intellectual property right shall be treated as goods of that kind if the use of such moulds or matrices infringes the right-holder's rights under Community law or the law of the Member State (*construed as including the Isle of Man*) in which the application for action by the customs authorities is made.

Article 3

1. This Regulation shall not apply to goods bearing a trademark with the consent of the holder of that trademark or to goods bearing a protected designation of origin or a protected geographical indication or which are protected by a patent or a supplementary protection certificate, by a copyright or related right or by a design right or a plant variety right and which have been manufactured with the consent of the right-holder but are placed in one of the situations referred to in Article 1(1) without the latter's consent.

It shall similarly not apply to goods referred to in the first subparagraph and which have been manufactured or are protected by another intellectual property right referred to in Article 2(1) under conditions other than those agreed with the right-holder.

2. Where a traveller's personal baggage contains goods of a non-commercial nature within the limits of the duty-free allowance and there are no material indications to suggest the goods are part of commercial traffic, Member States (*construed as including the Isle of Man*) shall consider such goods to be outside the scope of this Regulation.

CHAPTER II APPLICATIONS FOR ACTION BY THE CUSTOMS AUTHORITIES

Section 1

Measures prior to an application for action by the customs authorities

Article 4

1. Where the customs authorities, in the course of action in one of the situations referred to in Article 1(1) and before an application has been lodged by a right-holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them for a period of three working days from the moment of receipt of the notification by the right-holder and by the declarant or holder of the goods, if the latter are known, in order to enable the right-holder to submit an application for action in accordance with Article 5.

2. In accordance with the rules in force in the Member State (*construed as including the Isle of Man*) concerned, the customs authorities may, without divulging any information other than the actual or supposed number of items and their nature and before informing the right-holder of the possible infringement, ask the right-holder to provide them with any information they may need to confirm their suspicions.

Section 2

The lodging and processing of applications for customs action

Article 5

1. In each Member State (*construed as including the Isle of Man*) a right-holder may apply in writing to the competent customs department for action by the customs authorities when goods are found in one of the situations referred to in Article 1(1) (application for action).

2. Each Member State (*construed as including the Isle of Man*) shall designate the customs department competent to receive and process applications for action.

3. Where electronic data interchange systems exist, the Member States (*construed as including the Isle of Man*) shall encourage right-holders to lodge applications electronically.

4. Where the applicant is the right-holder of a Community trademark or a Community design right, a Community plant variety right or a designation of origin or geographical indication or a geographical designation protected by the Community (*construed as including the Isle of Man*), an application may, in addition to requesting action by the customs authorities of the Member State (*construed as including the Isle of Man*) in which it is lodged, request action by the customs authorities of one or more other Member States (*construed as including the Isle of Man*).

5. The application for action shall be made out on a form established in accordance with the procedure referred to in Article 21(2); it must contain all the information needed to enable the goods in question to be readily recognised by the customs authorities, and in particular:

- (i) an accurate and detailed technical description of the goods;
- (ii) any specific information the right-holder may have concerning the type or pattern of fraud;
- (iii) the name and address of the contact person appointed by the right-holder.

The application for action must also contain the declaration required of the applicant by Article 6 and proof that the applicant holds the right for the goods in question.

In the situation described in paragraph 4 the application for action shall indicate the Member State (*construed as including the Isle of Man*) or States in which customs action is requested as well as the names and addresses of the right-holder in each of the Member States (*construed as including the Isle of Man*) concerned.

By way of indication and where known, right-holders should also forward any other information they may have, such as:

- (a) the pre-tax value of the original goods on the legitimate market in the country in which the application for action is lodged;
- (b) the location of the goods or their intended destination;
- (c) particulars identifying the consignment or packages;
- (d) the scheduled arrival or departure date of the goods;
- (e) the means of transport used;
- (f) the identity of the importer, exporter or holder of the goods;
- (g) the country or countries of production and the routes used by traffickers;
- (h) the technical differences, if known, between the authentic and suspect goods.

6. Details may also be required which are specific to the type of intellectual property right referred to in the application for action.

7. On receiving an application for action, the competent customs department shall process that application and notify the applicant in writing of its decision within 30 working days of its receipt. The right-holder shall not be charged a fee to cover the administrative costs occasioned by the processing of the application.

8. Where the application does not contain the mandatory information listed in paragraph 5, the competent customs department may decide not to process the application for action; in that event it shall provide reasons for its decision and include information on the appeal procedure. The application can only be re-submitted when duly completed.

Article 6

1. Applications for action shall be accompanied by a declaration from the right-holder, which may be submitted either in writing or electronically, in accordance with national legislation, accepting liability towards the persons involved in a situation referred to in Article 1(1) in the event that a procedure initiated pursuant to Article 9(1) is discontinued owing to an act or omission by the right-holder or in the event that the goods in question are subsequently found not to infringe an intellectual property right.

In that declaration the right-holder shall also agree to bear all costs incurred under this Regulation in keeping goods under customs control pursuant to Article 9 and, where applicable, Article 11.

2. Where an application is submitted under Article 5(4), the right-holder shall agree in the declaration to provide and pay for any translation necessary; this declaration shall be valid in every Member State (*construed as including the Isle of Man*) in which the decision granting the application applies.

Article 7

Articles 5 and 6 shall apply mutatis mutandis to requests for an extension.

Section 3

Acceptance of the application for action

Article 8

1. When granting an application for action, the competent customs department shall specify the period during which the customs authorities are to take action. That period shall not exceed one year. On expiry of the period in question, and subject to the prior discharge of any debt owed by the right-holder under this Regulation, the department which took the initial decision may, at the right-holder's request, extend that period.

The right-holder shall notify the competent customs department referred to in Article 5(2), if his right ceases to be validly registered or expires.

2. The decision granting the right-holder's application for action shall immediately be forwarded to those customs offices of the Member State or States (*construed as including the Isle of Man*) likely to be concerned by the goods alleged in the application to infringe an intellectual property right.

When an application for action submitted in accordance with Article 5(4) is granted, the period during which the customs authorities are to take action shall be set at one year; on expiry of the period in question, the department which processed the initial application shall, on the right-holder's written application, extend that period. The first indent of Article 250 of Regulation (EEC) No 2913/92 shall apply mutatis mutandis to the decision granting that application and to decisions extending or repealing it.

Where an application for action is granted, it is for the applicant to forward that decision, with any other information and any translations that may be necessary, to the competent customs department of the Member State or States (*construed as including the Isle of Man*) in which the applicant has requested customs action. However, with the applicant's consent, the decision may be forwarded directly by the customs department which has taken the decision.

At the request of the customs authorities of the Member States (*construed as including the Isle of Man*) concerned, the applicant shall provide any additional information necessary for the implementation of the decision.

3. The period referred to in the second subparagraph of paragraph 2 shall run from the date of adoption of the decision granting the application. The decision will not enter into force in the recipient Member State or States (*construed as including the Isle of Man*) until it has been forwarded in accordance with the third subparagraph of paragraph 2 and the right-holder has fulfilled the formalities referred to in Article 6.

The decision shall then be sent immediately to the national customs offices likely to have to deal with the goods suspected of infringing intellectual property rights.

This paragraph shall apply mutatis mutandis to a decision extending the initial decision.

CHAPTER III
CONDITIONS GOVERNING ACTION BY THE CUSTOMS AUTHORITIES AND BY THE
AUTHORITY COMPETENT TO DECIDE ON THE CASE

Article 9

1. Where a customs office to which the decision granting an application by the right-holder has been forwarded pursuant to Article 8 is satisfied, after consulting the applicant where necessary, that goods in one of the situations referred to in Article 1(1) are suspected of infringing an intellectual property right covered by that decision, it shall suspend release of the goods or detain them.

The customs office shall immediately inform the competent customs department which processed the application.

2. The competent customs department or customs office referred to in paragraph 1 shall inform the right-holder and the declarant or holder of the goods within the meaning of Article 38 of Regulation (EEC) No 2913/92 of its action and is authorised to inform them of the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained, without being bound by the communication of that information to notify the authority competent to take a substantive decision.

3. With a view to establishing whether an intellectual property right has been infringed under national law, and in accordance with national provisions on the protection of personal data, commercial and industrial secrecy and professional and administrative confidentiality, the customs office or department which processed the application shall inform the right-holder, at his request and if known, of the names and addresses of the consignee, the consignor, the declarant or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right.

The customs office shall give the applicant and the persons involved in any of the situations referred to in Article 1(1) the opportunity to inspect goods whose release has been suspended or which have been detained.

When examining goods, the customs office may take samples and, according to the rules in force in the Member State (*construed as including the Isle of Man*) concerned, hand them over or send them to the right-holder, at his express request, strictly for the purposes of analysis and to facilitate the subsequent procedure. Where circumstances allow, subject to the requirements of Article 11(1) second indent where applicable, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is ended. Any analysis of these samples shall be carried out under the sole responsibility of the right-holder.

Article 10

The law in force in the Member State (*construed as including the Isle of Man*) within the territory of which the goods are placed in one of the situations referred to in Article 1(1) shall apply when deciding whether an intellectual property right has been infringed under national law.

That law shall also apply to the immediate notification of the customs department or office referred to in Article 9(1) that the procedure provided for in Article 13 has been initiated, unless the procedure was initiated by that department or office.

Article 11

1. Where customs authorities have detained or suspended the release of goods which are suspected of infringing an intellectual property right in one of the situations covered by Article 1(1), the Member States (*construed as including the Isle of Man*) may provide, in accordance with their national legislation, for a simplified procedure, to be used with the right-holder's agreement, which enables customs authorities to have such goods abandoned for destruction under customs control, without there being any need to determine whether an intellectual property right has been infringed under national law. To this end, Member States (*construed as including the Isle of Man*) shall, in accordance with their national legislation, apply the following conditions:

- that the right-holder inform the customs authorities in writing within 10 working days, or three working days in the case of perishable goods, of receipt of the notification provided for in Article 9, that the goods concerned by the procedure infringe an intellectual property right referred to in Article 2(1) and provide those authorities with the written agreement of the declarant, the holder or the owner of the goods to abandon the goods for destruction. With the agreement of the customs authorities, this information may be provided directly to customs by the declarant, the holder or the owner of the goods. This agreement shall be presumed to be accepted when the declarant, the holder or the owner of the goods has not specifically opposed destruction within the prescribed period. This period may be extended by a further ten working days where circumstances warrant it;
 - that destruction be carried out, unless otherwise specified in national legislation, at the expense and under the responsibility of the right-holder, and be systematically preceded by the taking of samples for keeping by the customs authorities in such conditions that they constitute evidence admissible in legal proceedings in the Member State (*construed as including the Isle of Man*) in which they might be needed.
2. In all other cases, for example where the declarant, holder or owner objects to or contests the destruction of the goods, the procedure laid down in Article 13 shall apply.

Article 12

A right-holder receiving the particulars cited in the first subparagraph of Article 9(3) shall use that information only for the purposes specified in Articles 10, 11 and 13(1).

Any other use, not permitted by the national legislation of the Member State (*construed as including the Isle of Man*) where the situation arose, may, on the basis of the law of the Member State (*construed as including the Isle of Man*) in which the goods in question are located, cause the right-holder to incur civil liability and lead to the suspension of the application for action, for the period of validity remaining before renewal, in the Member State (*construed as including the Isle of Man*) in which the events have taken place.

In the event of a further breach of this rule, the competent customs department may refuse to renew the application. In the case of an application of the kind provided for in Article 5(4), it must also notify the other Member States (*construed as including the Isle of Man*) indicated on the form.

Article 13

1. If, within 10 working days of receipt of the notification of suspension of release or of detention, the customs office referred to in Article 9(1) has not been notified that proceedings have been initiated to determine whether an intellectual property right has been infringed under national law in accordance with Article 10 or has not received the right-holder's agreement provided for in Article 11(1) where applicable, release of the goods shall be granted, or their detention shall be ended, as appropriate, subject to completion of all customs formalities.

This period may be extended by a maximum of 10 working days in appropriate cases.

2. In the case of perishable goods suspected of infringing an intellectual property right, the period referred to in paragraph 1 shall be three working days. That period may not be extended.

Article 14

1. In the case of goods suspected of infringing design rights, patents, supplementary protection certificates or plant variety rights, the declarant, owner, importer, holder or consignee of the goods shall be able to obtain the release of the goods or an end to their detention on provision of a security, provided that:

- (a) the customs office or department referred to in Article 9(1) has been notified, in accordance with Article 13(1), that a procedure has been initiated within the period provided for in Article 13(1) to establish whether an intellectual property right has been infringed under national law;
- (b) the authority empowered for this purpose has not authorised precautionary measures before the expiry of the time limit laid down in Article 13(1);
- (c) all customs formalities have been completed.

2. The security provided for in paragraph 1 must be sufficient to protect the interests of the right -holder.

Payment of the security shall not affect the other legal remedies available to the right-holder.

Where the procedure to determine whether an intellectual property right has been infringed under national law has been initiated other than on the initiative of the holder of a design right, patent, supplementary protection certificate or plant variety right, the security shall be released if the person initiating the said procedure does not exercise his right to institute legal proceedings within 20 working days of the date on which he receives notification of the suspension of release or detention.

Where the second subparagraph of Article 13(1) applies, this period may be extended to a maximum of 30 working days.

Article 15

The conditions of storage of the goods during the period of suspension of release or detention shall be determined by each Member State (*construed as including the Isle of Man*) but shall not give rise to costs for the customs administrations.

CHAPTER IV PROVISIONS APPLICABLE TO GOODS FOUND TO INFRINGE AN INTELLECTUAL PROPERTY RIGHT

Article 16

Goods found to infringe an intellectual property right at the end of the procedure provided for in Article 9 shall not be:

- allowed to enter into the Community customs territory,
- released for free circulation,
- removed from the Community customs territory,
- exported,
- re-exported,
- placed under a suspensive procedure or
- placed in a free zone or free warehouse.

Article 17

1. Without prejudice to the other legal remedies open to the right-holder, Member States (*construed as including the Isle of Man*) shall adopt the measures necessary to allow the competent authorities:

- (a) in accordance with the relevant provisions of national law, to destroy goods found to infringe an intellectual property right or dispose of them outside commercial channels in such a way as to preclude injury to the right-holder, without compensation of any sort and, unless otherwise specified in national legislation, at no cost to the exchequer;
- (b) to take, in respect of such goods, any other measures effectively depriving the persons concerned of any economic gains from the transaction.

Save in exceptional cases, simply removing the trademarks which have been affixed to counterfeit goods without authorisation shall not be regarded as effectively depriving the persons concerned of any economic gains from the transaction.

2. Goods found to infringe an intellectual property right may be forfeited to the exchequer. In that event, paragraph 1(a) shall apply.

CHAPTER V PENALTIES

Article 18

Each Member State (*construed as including the Isle of Man*) shall introduce penalties to apply in cases of violation of this Regulation. Such penalties must be effective, proportionate and dissuasive.

CHAPTER VI LIABILITY OF THE CUSTOMS AUTHORITIES AND THE RIGHT-HOLDER

Article 19

1. Save as provided by the law of the Member State (*construed as including the Isle of Man*) in which an application is lodged or, in the case of an application under Article 5(4), by the law of the Member State (*construed as including the Isle of Man*) in which goods infringing an intellectual property right are not detected by a customs office, the acceptance of an application shall not entitle the right-holder to compensation in the event that such goods are not detected by a customs office and are released or no action is taken to detain them in accordance with Article 9(1).
2. The exercise by a customs office or by another duly empowered authority of the powers conferred on them in order to fight against goods infringing an intellectual property right shall not render them liable towards the persons involved in the situations referred to in Article 1(1) or the persons affected by the measures provided for in Article 4 for damages suffered by them as a result of the authority's intervention, except where provided for by the law of the Member State (*construed as including the Isle of Man*) in which the application is made or, in the case of an application under Article 5(4), by the law of the Member State (*construed as including the Isle of Man*) in which loss or damage is incurred.
3. A right-holder's civil liability shall be governed by the law of the Member State (*construed as including the Isle of Man*) in which the goods in question were placed in one of the situations referred to in Article 1(1).

CHAPTER VII FINAL PROVISIONS

Article 20

The measures necessary for the application of this Regulation shall be adopted in accordance with the procedure referred to in Article 21(2).

Article 21

1. The Commission shall be assisted by the Customs Code Committee.
 2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.
- The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

Article 22

~~Member States shall communicate all relevant information on the application of this Regulation to the Commission.~~

~~The Commission shall forward this information to the other Member States.~~

~~The provisions of Regulation (EC) No 515/97 shall apply mutatis mutandis.~~

~~The details of the information procedure shall be drawn up under the implementing provisions in accordance with the procedure referred to in Article 21(2).~~

Article 23

~~On the basis of the information referred to in Article 22,~~ the Commission shall report annually to the Council on the application of this Regulation. This report may, where appropriate, be accompanied by a proposal to amend the Regulation.

Article 24

Regulation (EC) No 3295/94 is repealed with effect from 1 July 2004.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 25

~~This Regulation shall enter into force on the seventh day following that of its publication in the Official Journal of the European Union.~~

~~It shall apply with effect from 1 July 2004.~~

This Regulation shall be binding in its entirety and directly applicable ~~in all Member States.~~

Done at Brussels, 22 July 2003.
For the Council
The President
G. Alemanno

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- (1) OJ L 341, 30.12.1994, p. 8. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).
 - (2) OJ L 82, 22.3.1997, p. 1. Regulation as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
 - (3) OJ L 184, 17.7.1999, p. 23.
 - (4) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000, of the European Parliament and of the Council (OJ L 311, 12.12.2000, p. 17).
 - (5) OJ L 11, 14.01.1994, p. 1. Regulation as last amended by Regulation (EC) No 807/2003.
 - (6) OJ L 3, 5.1.2002, p. 1.
 - (7) OJ L 182, 2.7.1992, p. 1.
 - (8) OJ L 198, 8.8.1996, p. 30.
 - (9) OJ L 227, 1.9.1994, p. 1. Regulation as last amended by Regulation (EC) No 807/2003.
 - (10) OJ L 208, 24.7.1992, p. 1. Regulation as last amended by Regulation (EC) No 806/2003.
 - (11) OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 806/2003.
 - (12) OJ L 160, 12.6.1989, p. 1. Regulation as last amended by Regulation (EC) No 3378/94 of the European Parliament and of the Council (OJ L 366, 31.12.1994, p. 1).

