

### **PROTECTION AGAINST COUNTERFEIT GOODS**

In recent years, Azerbaijani government took important measures in the area of intellectual property (IP) protection.

On 1 January 2012, the new Customs Code of the Republic of Azerbaijan entered into force and a separate chapter in it is dedicated to the customs control of the goods containing IP rights. Furthermore, on 28 December 2012, the Rules “On Registry of Goods Containing Intellectual Property Rights” were approved by the Cabinet of Ministers of the Republic of Azerbaijan.

Prior to the introduction of the above mentioned acts, the customs authorities did not have a practical mechanism to determine whether goods imported into the country are original or not (counterfeit) as long as all relevant documents, such as sale and purchase agreements (bills of sale, purchase orders) were in proper order. As a result, significant amounts of counterfeit computer software on hard carriers, clothes, accessories, perfumes and other goods were/are imported into Azerbaijan for subsequent sales here. This, in turn, contributes to the country’s poor scoring on the list of jurisdictions protecting IP rights.

According to the 2011 Global Software Piracy Study carried out by the Business Software Alliance, the piracy rate in Azerbaijan was at 87 percent while in 2008 this rate was at 90 per cent. This shows slight decrease in the software piracy rate in Azerbaijan. In comparison, the USA had the lowest piracy rate in 2011 at 19 per cent.

Pursuant to the provisions of the newly introduced legal acts, a separate registry of goods containing IP rights will be kept by the customs authorities in order to control the goods imported into Azerbaijan. However, in order to be included into the said registry, the owner of the relevant IP rights must apply to the State Customs Committee of the Republic of Azerbaijan and provide additional information such as description of the goods and their samples, as well as information that will allow the authorities to distinguish counterfeit goods from the original ones. Samples of the counterfeit goods can also be provided to the customs authorities.

The goods containing IP rights are protected by the customs authorities for up to five years, provided that the protection period of the relevant IP rights is not less.

In the cases when the customs authorities suspect that counterfeit goods are being imported into the country, the clearance of such goods is postponed for ten business days and the said period can be further prolonged for the same period pursuant to the request of the relevant IP rights owner. If, as a result of the postponed clearance of the goods, it will be discovered that the goods are not counterfeit, the owner whose IP rights has been supposedly breached will have to reimburse the owner of the imported goods as well as pay all the expenses borne by the customs authorities in connection thereto. However, if it will be discovered that the imported goods were indeed counterfeit, all the expenses borne by the customs authorities will have to be borne by the owner of the imported goods.

It should also be noted that if the customs authorities suspect that certain goods (not included into the special registry and not mentioned by the applicant) are pirated or counterfeit, the customs authorities can suspend the customs clearance of the said goods for up to ten business days.

The process of registering goods/products with the customs authorities has been used by a number of developed countries around the world such as the USA and Australia. Having introduced a special procedure

for the protection of IP rights in Azerbaijan, a major step has been made in combating infringement of IP rights in the country.

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