



**AGENZIA  
DELLE  
DOGANE**

**CIRCOLARE N. 32/D**

Protocollo:5322/ip

Rif.:

Allegati:

Vs.

**Rome, 23 June 2004**

**ALLE DIREZIONI REGIONALI DELL' AGENZIA  
DELLE DOGANE  
LORO SEDI**

**ALLE DIREZIONI DELLE CIRCOSCRIZIONI  
DELL' AGENZIA DELLE DOGANE  
LORO SEDI**

**AGLI UFFICI DELLE DOGANE TUTTI  
LORO SEDI**

**ALLE DOGANE TUTTE  
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**AGLI UTF  
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**AL COMANDO GENERALE  
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**AL SERVIZIO CONSULTIVO  
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SEDE

ALL'AREA GESTIONE TRIBUTI  
E RAPPORTI CON GLI UTENTI  
SEDE

ALL'AREA VERIFICHE E CONTROLLI TRIBUTI  
DOGANALI ED ACCISE,  
LABORATORI CHIMICI  
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AI SIGG. DIRIGENTI DI VERTICE  
DI DIRETTA COLLABORAZIONE  
DEL DIRETTORE SEDE

AGLI UFFICI CENTRALE TUTTI  
SEDE

**RE: guidelines on new Community and national measures for customs authorities to take action against goods suspected of infringing certain intellectual property rights. Council Regulation (EC) No 1383 of 22 July 2003 and relevant Commission Regulation (EC), Law No 350 of 23 December 2003.**

The Council of the European Union adopted on 22 July 2003 the Regulation (EC) No.1383/2003 – published on the Official Journal of the European Communities, L, No 196/7 of 2 August 2003 – providing for new regulating measures aimed at prohibiting the introduction, release for free circulation, export, re-export, introduction into a free zone or free warehouse, as well as the entry for a suspensive procedure of “counterfeit and pirated goods”.

This regulation is applicable as of 1<sup>st</sup> July 2004.

The said regulation, hereinafter referred to also as the “basic regulation”, replaces the Council Regulation (EC) No 3295/94 of 22 December 1994, as amended by the Council Regulation (EC) No 241/99 of 25 January 1999 and contains as the previous regulation, the basic Community regulation aimed at reinforcing the international fight against illegal trade, of counterfeit goods and/or pirated goods, establishing the measures to be taken at the external borders of the European Union under the agreements protecting the intellectual property rights and original goods.

The European Commission, in compliance with the provisions of the new “basic regulation” has adopted in place of the Commission Regulation (EC) No 1367/95 of 16 June 1995, a special regulation which is being

published in the Official Journal of the European Communities, hereinafter referred to also as the “implementing regulation”.

With this regulation the Commission, in addition to define the subjective reference framework for implementing the provisions of the “basic regulation”, establishes the procedures to be followed for requesting customs action and identifies the means of proof certifying the entitlement to the right which is asked to be protected. Besides, it identifies the procedures for the information exchange between the Member States and the Commission, allowing the monitoring of the phenomena of fraud as well as the adoption of an adequate risk analysis to target controls.

The system laid down in the new regulation for taking action fulfils the need for a wider protection of the trademark holders and the intellectual property rights.

Hereinafter follow the procedures to be complied with by both the intellectual property right holder or by anyone who is authorized to use the same right and their representatives, as identified in Article 1 of the “implementing regulation” – when lodging an application for customs action, as well as all the fulfilments to be made by the offices for a correct application of the provisions and an efficient pursuit of the objectives.

The regulation concerning the area of the fight against counterfeiting as well as the forms for applying for (national and Community) action and any other useful information are available at the following address:

<http://www.agenziadogane.gov.it/italiano/dcsd/contraffazione.htm>

I – SUBJECT MATTER AND SCOPE
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1) – Requirements for the intervention of the customs authorities.

The customs authorities exercise their power of intervention when goods suspected of infringing an intellectual property right based on what has been laid down in Article 2, sub a), b), c), of the Regulation. No.1383/2003, are declared for the release for free circulation, exportation or re-exportation (Art. 61 of the Council Regulation (EC) No 2913/92 of 12 October 1992), or have been discovered at the time of a control carried out on goods entering or exiting the Community customs territory (Articles 37 and 183 of the Regulation (EC) No. 2913/92), or placed under a customs procedure under Article 84, par.1, a) of the said regulation, or re-exported prior to notification under the following Article 182, par. 2, or placed in a free zone or free warehouse (Article 166 of the Regulation (EC) No.2913/92).

2) – Goods infringing an intellectual property right

The regulation No.1383/2003 identifies three categories of “*goods infringing an intellectual property right*” namely, the counterfeit goods, pirated goods and a third category including different types of products:

- “*counterfeit goods*”, namely :
  - a) 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 in which the application for action by the customs authorities is made;
  - b) 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 a);
  - c) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point a).

Please note that trademark generally means any symbol graphically reproducible which is used to distinguish the products forming the subject of the activity of a natural or legal person. A trademark can be made, inter alia, by names presented under any form such as words, set of words, patronymic names, pseudonyms, letters, digits, acronyms, symbols, etc.

- “*pirated goods*” according to Article 2, par 1, b) of the Regulation (EC) No. 1383/03, 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 or the law of the Member State in which the application for customs action is made.

- *goods which, in the Member State in which the application for customs action is made, infringe the rights relating to:*

- a) a patent under that Member State's law;

- b) a supplementary protection certificate of the kind provided for in Council Regulation (EEC) No 1768/92 or Regulation (EC) No 1610/96 of the European Parliament and of the Council;
- c) a national plant variety right under the law of that Member State or a Community plant variety right of the kind provided for in Council Regulation (EC) No 2100/94. In particular as to a plant variety right this regulation provides for the possibility, for varieties of all the botanical genera and species, to obtain a right, (Article 5 and followings of the said regulation);
- d) Appellations of origin or geographical indication, under the law of such Member State or of the Council Regulations (EC) Nos. 2081/92 and 1493/1999.

Please note that the term DOP – Protected Appellation of Origin – means the geographical name of a region, locality, or in exceptional cases a country which serves to designate an agricultural products or foodstuffs:

- Originating therein;
- the quality and characteristics of which are due exclusively or essentially to the geographical environment;
- manufactured, processed and elaborated therein.

The term PGI- Protected Geographical Indication means the name of a region, specific place or country describing a product originating in that region, specific place used to designate an agricultural product or foodstuffs:

- originating therein;
- possessing a quality or reputation which may be attributed to the geographical environment and which is produced, processed and elaborated within the specific geographical area.

- e) Geographical appellations, under the Council Regulation (EC) No.1576/89.

It is important to stress that the rights referred to in points c) – d) – e) were not covered by the rules previously in force.

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 in which the application for action by the customs authorities is made.

### 3) – Exclusions

In accordance with Article 3 of the Regulation No.1383/03, the latter does 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) of the “basic regulation” without the latter's consent;
- goods referred to in the previous subparagraph and which have been manufactured or are protected by another intellectual property right referred to in Article 2(1) of the “basic regulation”, under conditions other than those agreed with the right-holder.

The aim of the above-mentioned provisions is to prevent the application of the Community Law to possible disputes of private law between the right-holder and the importer and, in particular, to the so-called “parallel” selling which is treated as those suspected of infringing the intellectual property rights. This selling commonly concerns products of original trademarks and is carried out by distributors placed outside the official distribution chain required by the manufacturers to protect their commercial interests (so-called “grey market”).

- goods of a non-commercial nature contained in travellers' personal luggage the overall value of which is within the limits of the duty-free allowance subject to the condition that there are no material indications to suggest the goods are part of commercial traffic; this case was already provided for in Article 10 of the Regulation (EC) No. 3295/94 and afterwards in Article 3, point 2 of the Regulation (EC) No.1383/03.

## II - ACTION BY THE CUSTOMS AUTHORITIES

The competent customs authority which is competent for taking action is the Customs Agency. That being said, the procedures of action are as follows.

### 1) - Procedure “ex officio”

According to the Community legislator, the procedure “ex officio”, laid down in Article 4 of the “basic regulation” No. 1383/03 is a type of advanced protection acknowledging the right-holder who did not use the kind of initiative’s protection provided for in the said regulation and governed in the relevant “implementing regulation”, the possibility to equally use the procedure to detain goods suspected to infringe such a right.

In fact where the conditions provided for in Article 1, (1) of the “basic regulation” occur – referred to in detail in Section I, 1) of this circular – and before an application has been lodged by a right-holder or granted, the customs offices, when have sufficient grounds for suspecting that goods infringe an intellectual property right, may suspend the release of the goods or detain them for a period of three working days, by notifying it to the holder. This time limit becomes effective as of 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 pursuant to Article 5 of the Regulation No. 1383/03 and prior to the lodging or acceptance of an application by the right-holder.

Furthermore, the customs offices 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.

## 2) – Normal procedure

In order to strengthen the tools for the fight against counterfeiting, also the national legislator, with the Financial Law No. 350 of 23 December 2003, provided for in Article 4, paragraph 54, the implementation of a multimedia databank containing all the specific data allowing the distinction of the products to be protected.

According to the provisions of the [Director’s decision No.282/UD of 28 february 2004](#) this databank is established within the premises of the Customs Agency and is supplied by data contained in the applications for protection submitted by the intellectual property right-holders.

Once this tool being established, the applications in question shall be normally electronically submitted in accordance with the provisions governing the conditions and technical procedures for the presentation of the customs documents by means of EDI (Electronic Data Interchange).

### *2) a – Presentation of an application for action*



Pursuant to Article 5 of the “basic regulation”, the application for action by the customs authorities, when goods are found in one of the situations referred to in Article 1, (1) may be submitted to the competent customs service referred to in the following point 2b, using the forms which can be found at the following address:

<http://www.agenziadogane.gov.it/italiano/download/modulistica/domanda-sospensione.doc>

The application for action by the customs authorities is possibly aimed at protecting national or Community property, under Article 5, (1) ([national application](#)) or (4) ([Community application](#)) respectively of the “basic regulation”.

In both cases, the application made by using the form provided for in Article 3 of the “implementing regulation” and in accordance with the provisions set forth therein shall contain:

- an accurate and detailed technical description of the goods;
- any specific information the right-holder may have concerning the type or pattern of fraud, if known by the right’s holder;
- the name and address of the contact person appointed by the right-holder;
- the applicant’s declaration referred to in Article 6 of the “basic regulation” (Annexes IB and IIB to the application form) whereby the holder takes civil liability for any possible damage he can cause to the persons affected by one of the situations referred to in Article 1 (1) of the “basic regulation”.

To this regard, please note that this formal commitment replaces the guarantee previously provided for in Article 3, point 6 of the repealed Regulation No. 3295/94, as amended by the Regulation No.241/99.

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

- the pre-tax value of the original goods on the legitimate market in the country in which the application for action is lodged;
- the location of the goods or their intended destination;
- particulars identifying the consignment or packages;
- the scheduled arrival or departure date of the goods;
- the means of transport used;
- the identity of the importer, exporter or holder of the goods;
- the country or countries of production and the routes used by traffickers;

- the technical differences, if known, between the authentic and suspect goods.

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

As to the subject that is legitimated to submit the application, there are three fundamental cases:

- a) the presentation of the application by the right-holder;
- b) the presentation of the application by another subject authorised to use one of the rights referred to in Article 2, (1) of the “basic regulation”;
- c) presentation of the application by the representative of the right-holder or of the person referred to in point b).

a) under Article 2 (2) of the “basic regulation and Article 1 of the “implementing regulation” "right-holder" means:

- 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 Article 2, point 1, c) of the “basic regulation
- any other legal or natural person authorised to use the intellectual property rights such as for example publicly managed companies the only or main purpose of which is to manage the copyright or related right, the associations referred to in Article 5 of the Regulation No. 2081/92, the persons referred to in Article 11 of the regulation No. 2100/94.

The application must be validly justified by the holder.

In particular, as to the **Italian trademark**, the relevant application must include copy of the trademark registration issued by the Ministry for the Productive Activities, Directorate General for the development of production and competitiveness - Italian Patent and Trademark Office or a copy of the application submitted at the time of the registration of the trademark.

The holder of a **Community trademark** must enclose instead the photocopy of the European registration certificate of the trademark, made at the UAMI (Office for the Harmonization in the internal market of Alicante).

The holder of an **International trademark** must enclose the photocopy of the international registration certificate of the trademark made by the WIPO (World Intellectual Property Organization) pursuant to the Madrid Agreement on the international registration of trademarks and the MOU of Madrid concerning also the international registration of trademarks.

More in general, as to registered or deposited rights, a proof of the registration or deposit of the title by the concerned office must be enclosed in the application for action.

As to copyright and related rights or to not deposited or registered design rights, any kind of proof justifying the capacity of being the author or the original holder of the right.

The holder of a ***plant variety right*** shall present a certificate issued by the competent CPVO (Community Plant Variety Office) certifying the existence of his right.

As to ***protected appellations of origin and protected geographical indications*** the proof is composed of two mandatory elements: the proof that the subject in question is the manufacturer or the association and the proof that the appellation/indication has been registered. The same applies to wines and spirits. For any further information you can refer to the Community website at the following address:

[http://europa.eu.int/comm/agriculture/foodqual/quali1\\_it.htm](http://europa.eu.int/comm/agriculture/foodqual/quali1_it.htm)

b) "authorised person" to use one of the rights provided for in Article 2 (1) of the "basic regulation" means the natural or legal person that is authorised to use the right under examination by virtue of an agreement or contract. In this case the said person shall justify not only the title based on which he/she is authorised to use the same right but also the proof required for the right-holder.

c) "representative of the right-holder" or of the "user", means the natural person, law firm or office, association etc., which has the power to act on behalf and for account of the right-holder or user.

The representing person shall provide under Article 2, point 3 of the "implementing regulation" not only the proofs referred to in the previous points, but also the proof to have the capacity/power to act (proxy). He/she shall also make the declaration provided for in Article 6 of the "basic regulation", signed respectively by the holder of the right or by the user where the latter is the represented person.

The same representative shall present also the title authorising him to incur all costs resulting from the customs action, under Article 6, (2) of the "basic regulation".

The documentation justifying the existence of his own right may be produced in copy; the customs service responsible for the acceptance of the applications for action (referred to in the next point 2b) may ask, at any time, the party to produce the original copy of the document.

The provisions of the Presidential Decree No. 445 of 28.12.2000, consolidation act of the legislative and regulating provisions on the administrative documentation, shall apply.

As to the arrangements on the proof to be given, in particular, to the validity of the legalisations affixed on documents made abroad, please note the following:

- documents made abroad in countries with which specific international agreements - Treaties or Conventions - are in force do not require any further formalities and, therefore, are immediately and directly valid in Italy;
- legalisations made within the [countries signatories of the International Convention of The Hague of 5 October 1961](#) on the abolitions of the requirement of legalisation for foreign public documents: are valid in Italy provided they bear the “Apostille”, within the meaning of the same Convention;
- documents made abroad in countries other than the above-mentioned ones: it is required the legalisation of the signature of the public official certifying it. In this case the provisions referred to in Article 33, (2) of the Presidential Decree No. 445/2000 shall apply; Based on the said decree, the signatures on documents made abroad by foreign authorities require, to be valid in the State, their legalisation by the diplomatic and consular representations of the Italian government abroad.

The signatures made on documents by the competent bodies of the Italian diplomatic and consular representations or by officials acting on their behalf do not require any legalisation.

Where the documents above referred to are made in a foreign language, a translation into the Italian language, certified as a true copy by the competent diplomatic and consular representation or by an official translator, shall accompany them.

Where the applicant holds a Community trademark or design right, a Community plant variety right, a Community protection of an appellation of origin or geographical indication, or of a geographical appellation, the application for action may seek not only the action of the customs authorities of the Member State where it was submitted, but also of the customs authorities of other Member States (the so-called “**Community application**” – Article 5, (4) of the “basic regulation”).

In this case the application shall bear the name of the State or States which are applied for customs action as well as the name and address of the right-holder in each of the Member States concerned.

In order to identify the competent office in each of the Member State, should an application under Article 5 (4) of the Regulation (EC) No.1383/03 be made, please, refer to the list enclosed in the Community application form (Annex II to the “basic regulation”)

Within the meaning of Article 8 of the Regulation No.1383/03, the national application for protection is valid up to a maximum of one year and can be extended.

The application presented within the meaning of Article 5, (4), the so-called “Community application” is valid for one year and can be extended upon written request by the right-holder.

2) b – *The competent office for receiving the application for action*

The national customs service authorized, under Article 5, (2) of the “Basic Regulation”, to receive the applications of the rights-holders in question is the **l’Ufficio Antifrode Centrale (Central Antifraud office) - via Mario Carucci n. 71, 00143 Roma. – tel. +39 06 50 24 6401 – 50 24 65 96 - fax: +39 06 50 95 73 00 – 50 24 31 77 – [dogane.antifrode@agenziadogane.it](mailto:dogane.antifrode@agenziadogane.it)**

The Central Antifraud office, once having checked that the application presented by the authorised subject contains all the required elements and documents, adopts the protecting measure requested by the party within 30 working days from the receipt of the application, by informing in writing the applicant.

The applications which do not contain the information required in Article 5 of the “Basic Regulation” are rejected by the said office. The measure for rejecting an application is adopted in writing and formally communicated by means of a registered letter with advice of delivery and bears the reasons for its rejection.

This measure, coming from a top tier structure of the Agency, is a final measure and therefore an administrative appeal against it is inadmissible.

An appeal against the measure rejecting the protection can be lodged by the requesting party at the jurisdictionally competent T.A.R.(Regional Court) of Latium; To this regard, the legislation in force concerning the appeals to the administrative judge shall apply.

The rejected application may be presented again.

The Central Anti-fraud Office sends the submitted applications for suspension, together with the enclosed required documents – on paper – to the Regional Directorates of the Customs Agency.

The examination of the applications for suspension by the customs offices is facilitated by the special function envisaged by the AIDA system.

2) c – *Commitment by the requesting party*

The person that wants to receive the protection granted under the legislation in force must send, within the meaning of Article 8 (2), III paragraph, of the Regulation No.1383/03, the decision granting the application

for action, together with all the required documents and, possibly, any translations that may be necessary to all the customs services of the Member States which have been applied for action.

At the request of the customs authorities of the Member States concerned, the applicant shall provide, if the case may be, any additional information necessary for the implementation of the decision

Should the customs office detain the goods or suspend their release, the requesting party must inform, without delay, the said office about the starting of a procedure aimed at establishing whether an intellectual property right has been infringed under Article 10 of the “Basic Regulation”.

The holder of the right, with the statement of commitment referred to in Article 6 of the “Basic Regulation”, accept to bear all costs incurred for maintaining goods under the customs surveillance, under Article 9 of the said Regulation, and must inform the above-mentioned Central Anti-fraud Office about any possible change that may occur in the elements on which the application is based (if, for example, one of the rights in question is no more valid or is terminated/lapsed for lapse of time), as well as in the judicial rulings following the suspension of the release of goods .

The beneficiary of an exclusive right to use must, in particular, inform the said office about any change, rescission or termination of a contract signed with the holder.

### III - FULFILMENTS BY THE CUSTOMS OFFICES

The customs office shall suspend the release or detain the goods, by informing the Central Antifraud Office when, after consultation with the applicant, it determines that the goods falling within one of the situations referred to in Article 1 of the “Basic Regulation” are suspected of infringing an intellectual property right.

To this regard, the customs office shall, pursuant to Article 38 of the Regulation (EC) No. 2913/92, also inform the right-holder as well as the declarant or the holder of the goods, asking the party to formally appoint the expert examining the goods suspected of infringing an intellectual property right and carrying out a survey thereof.

The right-holder or the technical referent may be identified by consulting the special function on the AIDA system.

Please note that the survey will be made also based on digital photos of the suspected goods, made by the customs office, thus facilitating the identification of the features of the product suspected of being counterfeited.

The concerned company takes liability for the choice of the identification by means of a digital photo and accepts its consequences;

However this technique does not replace the usual means of identification of the goods; it is rather a support to the traditional identifying methods.

To this regard, we refer to the guidelines previously given on this procedure, which are intended for the offices of the Regional Directorates, equipped, for the time being, with this equipment.

In compliance with the national rules on the protection of personal data, trade and industrial secret, as well as the administrative and professional secret, to establish possible infringements of a right, the customs office, upon request of the right-holder or any other authorised person, provides the details to determine the lot of goods suspected of infringing an intellectual property right, so that the said persons may examine the goods in question.

The customs office may, at the explicit request by the party, take samples from the goods which are suspected of infringing an intellectual property right, to be analysed, sending them to the right-holder that shall afterwards return them to the same office.

The analysis of the samples are carried out under the responsibility of the right-holder.

The suspension of the release of goods or their detainment may last, pursuant to Article 13 of the “Basic Regulation”, **ten working days** from the date of receipt of the notification of suspension of release or of detention, certified by the relevant advice of receipt of the registered letter or other communication by the holder of the right to the customs office; this period may be extended by 10 working days in appropriate cases after that if the customs office has not been notified that proceedings have been initiated to determine whether an intellectual property right has been infringed in accordance with Article 10, releases the goods, making them available to the party.

In the case of perishable goods, the period above referred to, shall be **three working days**. This period may not be extended.

In the case of goods suspected of infringing design rights, patents, supplementary protection certificates or plant variety rights, under Article 14 of the “Basic Regulation”, 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 the customs office has been notified, that a procedure has been initiated to establish whether an intellectual property right has been infringed, precautionary measures have not been taken in accordance with Article 13(1) and all customs formalities have been completed. The security must be sufficient to protect the interests of the right-holder.

Where, from controls carried out by the offices serious criminal cases are found falling under one of the infringements provided for in the provisions

in force, the proceeding office **shall** pursuant to Article 347 of the Code of Criminal Procedure (C.C.P.) **inform** the competent judicial authority thereof.

Under Article 354, (2) of the C.C.P, an ex officio seizure will be also carried out where the case so requires, in order to assure for example that the goods suspected of being counterfeited are not marketed or disappear awaiting the events to be established.

In this case, in view of the recent judicial sentences (the last one of joint sitting of the divisions of the Court of Cassation, Sentence No. 5876 of 13.02.2004), while drawing up a seizure report, the assumption of crime shall be adequately outlined, establishing the required linking between the assumed offence and the precautionary measure to be taken (seizure), and clearly pointing out the probative aim of the deed accomplished (to avoid that the party, freely having at its own disposal the goods, may make arrangements so as to make impossible any further investigative activity of investigation and inquiry on the said goods).

These expectations are consistent with the provisions of the national legislator laid down in Article 4, (80) of the financial Law 2004 (Law No.350 of 23.12.2003) providing that the “administrative authority” can order the seizure of the imported, exported or marketed goods found to infringe an intellectual property right, prior to the authorisation by the judicial authority.

The same goods can be destroyed after three months from the date of the seizure subject to the retention of samples to be used for judicial purposes and the costs for their destruction will be borne, where possible, by the offender.

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In order to allow the European Commission to follow the actual application of the procedure, as well as to draw up the report referred to in Article 23 of the “Basic Regulation” to detect the phenomena of fraud and to develop an adequate risk analysis by the Member States – in compliance with the provisions laid down in Article 8 of the “implementing regulation” – those Regional Directorates will go on sending to the Central Antifraud Office the usual monthly reports, using to this regard the new attached table form with the relevant instructions, completed in Excel format and which replaces the table used until now.

#### IV - FINAL PROVISIONS

Here follow some clarifications on the transitional rules, as well as further details for the correct application of the examined legislation..

- a) the simplified procedure laid down in Article 11 of the Regulation (EC) No.1383/2003, on the destruction of goods suspected of infringing an



intellectual property right, without the need to establish whether an infringement of the said right has occurred, does not apply at present, being the said procedure subject to the issue of a national implementing legislation;

- b)* Under Article 9 of the “implementing Regulation”, the applications for action, submitted before the date of 1 July 2004 are valid until their normal expiration’s date and cannot be renewed. As of 1<sup>st</sup> July 2004, the said applications – although submitted when the Regulation (EC) No. 3295/94, as amended by the Regulation (EC) No.241/99, was still in force – must be supplemented by the declaration of commitment referred to in Article 6 of the “Basic Regulation” the presentation of which releases the guarantee lodged at the Collector’s office of the customs district of Roma I, allowing it to be returned to the entitled person.

When the declaration of commitment is received by the Central Antifraud Office, it will inform the said Collector’s Office for the adoption of all the needed fulfilments;

- c)* In the reckoning of the time period provided for in the “Basic Regulation” for the calculation of the “working days”, the day of receipt of the notification as well as Saturday and bank holidays must be excluded;

- d)* Under Article 19, (1) of the “Basic Regulation” and subject to the acceptance of the application, the right-holder is entitled to compensation in the event that goods found to infringe an intellectual property right are not detected by a customs office and are released or no action is taken to detain them.

To this regard the Community control’s methods of the customs declarations, based on Articles 68 and 71 of the Regulation (EC) No.2913/92 make use of risk analysis as a tool allowing to protect both the Community and national financial interests as well as to assure efficient controls, also in view of the needs for a smoother flow of trade.

Based on these consolidated principles, the customs administration makes use since 1999 of the automated customs circuit procedure for the selection of the declarations to be controlled, whose sector’s provisions were update with circular No.74/D of 18 December 2003.

That being said, and having in mind that the current system already contains the appropriate risk profiles dynamically calibrated for the sector under examination, please note that the assumption referred to in the said Article 19, (1) of the “Basic Regulation” occurs only when the declaration concerning the protected goods has been selected for physical control (VM) by the customs control circuit or the physical control was decided autonomously without it giving rise to their seizure or detainment.

To identify specific and special risk indicators useful for the activity of prevention and repression of fraudulent phenomena, the contribute and support of trade and industrial associations, also by signing specific Memorandum of Understanding is essential.

The Regional Directorates will arrange, based on an accurate local risk analysis, any appropriate tool for monitoring the trade flow concerning the territory of competence, so as to identify the possible routes followed by the goods suspected of infringing an intellectual property right.

These remarks must be reported to the writer by sending the relevant local risk analysis fiche.

*Il Direttore dell'Ufficio*

*D.ssa C. Bricca*