

Avropa İttifaqının Azərbaycan Respublikası üçün
Qonşuluq və Tərəfdaşlıq Aləti



BROCHURE ON
BORDER PROTECTION OF IP
RIGHTS IN AZERBAIJAN



Layihə Avropa İttifaqı
tərəfindən maliyyələşdirilir



Layihə DMI Associates və EKVİTA
Konsorsiumu tərəfindən həyata keçirilir

Table of contents

Introduction - Issues at stake: what?	4
Part 1: Why is it so important to act at borders against IPR violators?	4
1.1 Main Causes of IPR violations worldwide	4
1.2 Products most commonly violating IP Rights	5
1.3 Detailed reasons for the prohibition of IP infringing products	6
1.3.1. Economic damages for business due to the violation of Intellectual Property Rights	6
1.3.2. Economic impact for National economy of Azerbaijan due to the violation of Intellectual Property Rights	6
1.3.3. Impact of the violation of Intellectual Property Rights on Consumer Protection	6
Part 2: How are Intellectual Property Rights currently protected at borders?	7
2.1. Establishing IP rights	7
2.2. Registering IP rights with the Intellectual Property Agency of the Republic of Azerbaijan	7
2.3. Customs Enforcement of intellectual property rights (IPRs)	8
2.3.1. Main sources of the National Legislation for Intellectual Property Rights border enforcement in Azerbaijan	8
2.3.2. Main Sources of international treaties in force for Azerbaijan obligations on IPR enforcement	8
2.3.3. Border Control Operations	8
2.3.3.1. Summary of the Intellectual Property Rights Registration Procedure with Customs	9
2.3.3.1.1. Main principles for IPR registration with Customs	9
2.3.3.1.2. Acceptance of the Registration by the Registration Authority	10
2.3.3.2. How Border Control Measures take place effectively?	10
2.3.4. Results from Action taken by Customs at Borders	11
Box: Information about Customs authorities responsible for activities against counterfeit products and for IP enforcement	11
Box: USEFUL HINTS FOR READERS: How fake products can be identified?	11
Conclusion: Better protection of IPRs thanks to Customs	12
ANNEX: GLOSSARY	13

Introduction

Issues at stake (WHAT?)

IP enforcement is part of Azerbaijan's policies aimed at supporting its economic growth. Therefore, Azerbaijan's IP Legislation commits to respect highest international standards. **Enforcement at Customs is key to the success of the National efforts to avoid violations of IP Rights: indeed, as goods are inspected at borders, it is sometimes easier to discover violations of IP rights during customs operations, both for imported and for exported goods, than tracking goods while circulating freely in the country. This is why IP Enforcement is crucial during customs operations.**

The efforts of government customs officials and justice, with the support of businesses, indeed permit to avoid violations of IP rights, but also contribute to boost economic development: there is acknowledged evidence that a country that gives key importance to full implementation of IP legislation also attracts foreign investments, favors technology transfer, and supports commercial and industrial innovation, since intellectual property is essential:

For the promotion of invention, innovation and innovative designs and creativity in industrial and agri-food sectors;

For the protection of all companies against trademark abuses;

For national cultural industries, e.g., for the music, film and publishing industries.

This Brochure is therefore intended to boost awareness on the importance of effective implementation of Azerbaijan's IP border protection legislation, for ensuring Azerbaijan's development's objectives.

Part 1: Why is it so important to act at borders against IPR violators?

1.1 Main Causes of IPR violations worldwide

The principal cause of IPR violations in the world is the very high economic profit that dishonest businesses can make by using without authorization the creativity and creative investments of other people, and by copying products at a cheaper cost than those incurred by the creative investors. This activity is illegal under the laws of Azerbaijan and in most countries in the world. It often develops as a consequence of ignorance and the **undue perception by the public that violations of intellectual property rights are not very serious infractions**, compared to other types of dishonest activities: consumers' ignorance of danger permit IPR infringers to have a market. Government action against IPR infringers serves to challenge misguided public perceptions in this respect.

International Trade, and the connected globalization of economy and digitalization techniques in manufacturing of numerous goods, are offering Azerbaijani consumers and producers many possibilities but, as a side effect, also permitted all over the world IPR violations to blossom: **it is indeed easier and easier for violators to try to reproduce IP infringing goods, and to sell, export and import them all over the**

world, including to and from Azerbaijan. Digitalization and the growing availability of second-hand manufacturing material do facilitate counterfeiting and piracy of a large variety of products – ranging from traditional industries like tobacco and clothing industry to high-tech sectors such as computer material and software and music supports.

Many fake products have much lower production costs, for one, or many of the following acknowledged reasons:

They are manufactured in areas with low labor and operational costs;
Production facilities often do not respect national and international workers' rights, including national health and safety laws;
Quality control cannot at all exist: guarantees on product quality and/or health and safety are not provided on goods produced in violation of IPRs;
Since IP infringing goods are produced in violation of many laws, their producers and traders are able to offer low price as they often manage to escape taxes, compliance with normal accounting rules, and largely make payments in cash, often to the detriment of Azerbaijan Manat currency regulations – all of which combine to be a threat to national economic stability;
For all above reasons, foreign and national networks of organized crime involved in other illegal activities traditionally try to control production and trafficking of such goods.

1.2 Products most commonly violating IP Rights

For the categories of goods listed below, consumers are frequently misled on the products they buy; or buy fake products intentionally in believing wrongly that they would make savings:

Branded goods in textile, shoe, agri-food (including tea) and electronics industry goods (IP infringers' objectives: significant profits mainly due to the illegal use of the brand name. IP infringers have no worrying at placing consumers health and safety at risk);
Tobacco and Cigarettes (IP infringers objective: significant profits due to the illegal use of the brand name; and the evasion of tax, excise and customs duties);
Alcoholic Beverages (IP infringers' objective: significant profits due to the illegal use of the brand name; and the evasion of tax, excise and import duties. IP infringers have no worrying at putting consumers health and safety at risk);
Pharmaceuticals (IP infringers' objective: significant profits due to the illegal use of the brand name; the evasion of tax and import duties. IP infringers have no problems at putting consumers health and safety at risk);
Software (IP infringers objective: significant profits due to the illegal use of the brand name);
Recorded Films and Music (IP infringer's objective: significant profits due to the illegal use of the copyright protected content).

This list cannot be fully exhaustive: indeed the situation may change very rapidly as IP infringers are constantly trying to find new areas for their illegal activities.



1.3 Detailed reasons for the prohibition of IP infringing products

Violations of intellectual property rights create damages to honest businesses in Azerbaijan, to the national economy of Azerbaijan and to Azerbaijani consumers. These damages justify the need for implementing efficient and regularly modernized IP protection legislation.

1.3.1. Economic damages for business due to the violation of Intellectual Property Rights

For businesses investing in creativity and innovation, the losses due to IPR violations can be devastating and include:

- Loss of sales;

- Loss of their competitive advantage as their research efforts and costs, product development as well as their marketing efforts are by-passed;

- Extra costs of market monitoring and legal actions against IP infringers.

1.3.2. Economic impact for National economy of Azerbaijan due to the violation of Intellectual Property Rights

For the country, the losses due to IPR violations could be many, including:

- Losses to the public revenue which must be compensated by increased taxation on consumers and legitimate businesses;

- Less investment from technology oriented sectors i.e., industries in which the protection of IP rights are key elements such as IT;

- A reduction in technology transfer and investment from foreign investors;

- Lowering of labor standards and skills of employees and workers;

- Encouraging an economy of reproduction, which stifles the development of a competitive and innovative economy;

- Infiltration of the IPR infringers' business by criminal organizations, who will also use revenues from these activities to subsidize and finance other criminal (and in some cases, terrorist) activities;

- Threat to national cultural heritage and cultural diversity as weak protection of music, dance, performance, and folklore, in particular on music recordings and audiovisual recording deprives artists of revenues and of means of expression.

1.3.3. Impact of the violation of Intellectual Property Rights on Consumer Protection

Serious consequences for consumers:

- Real risks to consumers health and safety;

- Lowering of consumers standards for quality of products;

- Consumer deception about the quality, health and safety of the infringing product;

- No after sales service or possible recourse in the event of a product presenting defects; no damage for injury that may have been caused by the product.

Violation of IPRs is a serious matter. The World Customs Organization (WCO), the World Health Organization (WHO), the European Union, the Organisation for Economic Cooperation and Development (OECD), the International Chamber of Commerce (ICC) and many other authoritative international bodies are all reporting that IP rights infringers have no respect for consumers' health and safety.

In the World, there exist numerous cases where IP Rights infringers do not hesitate to replace medicine labels or food products labels with labels showing later expiry dates, and even to reproduce in large quantities counterfeit and quality deceptive products such as counterfeit painkillers and antibiotics. Cases were reported abroad of syringes that were retrieved from hospital garbage and refilled in a non-sterile environment with low-cost ingredients dangerous for health if injected.

Part 2: How are Intellectual Property Rights currently protected at borders?

IP Rights can be correctly and well-protected at borders if National Legislation ensures a protection for:

- The Establishment of IP Rights;
- The Registration of IP Rights in the country;
- Enforcement of IP Rights, with due focus on customs enforcement at borders.

Indeed, Azerbaijani Laws were established / recently revised in accordance with the highest international norms and have the objective to protect properly **establishment, registration and enforcement of IP Rights, including at borders**: their full implementation means that this IP protection legislation should be fully **known and understood in the country, in particular at Border Customs operations**.

2.1. Establishing IP rights

In order to counter IP infringements it is necessary to ensure that IP rights be protected. Azerbaijani Laws establish, in accordance with international norms, that there are several categories of IP rights. The most common are:

Patents for inventions or improved products and processes.

Trade Marks, which clearly identify goods and services of businesses.

Designs which protect the ornamental appearance of products including the colors, shape, texture, decoration, lines and materials of a product or its packaging.

Copyright, which protects original artistic, literary, musical and dramatic works. This also covers computer programs, films, sound recordings and broadcasts.

More details on all IP rights are included in the Annex to this Brochure: "Glossary".

2.2. Registering IP rights with the Intellectual Property Agency of the Republic of Azerbaijan

Registering IP rights with the Intellectual Property Agency of the Republic of Azerbaijan Individuals and companies must apply to the Intellectual Property Agency of the Republic of Azerbaijan (<http://copat.gov.az>), the only competent administration in the Country, in order to register a patent, a design, a trademark or a geographical indication in Azerbaijan. In addition, as Azerbaijan is party to the World Intellectual Property Organization (WIPO - <http://www.wipo.int>), WIPO can be used to facilitate the protection of Azerbaijani trademarks and patents in many countries worldwide.

Registration procedures in Azerbaijan are carried out as per recent Azerbaijani Laws that are established in accordance with international norms.

Please note that copyright is generally not registered *and that in Azerbaijan, mandatory*



official registration is not required for the protection of copyright. Registration in this case is voluntary, and the copyright object is in any case protected from the moment of its creation.

Self-evidently, only rights protected in Azerbaijan can be enforced in the country, including at its borders.

2.3. Customs Enforcement of intellectual property rights (IPRs)

As indicated in the Introduction of the present Brochure, enforcement at Customs is key to the success of the National efforts to avoid violations of IP Rights: indeed, as goods are inspected at borders, it is sometimes easier to discover violations of established IP rights during customs operations, both for imported and for exported goods, than tracking goods while circulating freely in the country. This is a crucial issue for the efficiency of the implementation of the National IP protection legislation.

2.3.1. Main sources of the National Legislation for Intellectual Property Rights border enforcement in Azerbaijan

Border enforcement of Intellectual Property Rights in Azerbaijan operates in the general framework of enforcement, in particular in accordance with:

Arts. 278-288 of the Customs Code of Azerbaijan;
“Rules of registry of goods which contain objects of IP” approved by the Decree of Cabinet of Ministers dated 28.12.2012 N 323;
“Rules of stoppage, extension of stoppage of goods which contain the objects of IP and informing the applicant and declarant about rulings” approved by the Decree of Cabinet of Ministers dated 25 June 2013, N 163
The Civil Code (2005).

2.3.2. Main Sources of international treaties in force for Azerbaijan obligations on IPR enforcement:

The Paris Convention for the Protection of Industrial Property;
The Berne Convention for the Protection of Literary and Artistic Works;
The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

In full accordance with the above Legislation, Customs enforcement operates during border control operations.

2.3.3. Border Control Operations

Right holders (i.e. legitimate business operators) who want to protect at best their rights will need to use a specific, easy to manage, Registration Procedure with the State Customs Committee of Azerbaijan: this will permit Customs Officers to better and more easily identify infringements during border control operations, alert IPR holders, and allow them to launch actions at Courts to stop the infringements and get remedies against IPR violators.

More in detail:

2.3.3.1. Summary of the Intellectual Property Rights Registration Procedure with Customs

This procedure represents an important step for the holder of an Intellectual Property Right, who is entitled to request the State Customs Committee to register his Intellectual Property Right, so that at each border control point Customs authorities may identify suspected infringing goods. The IPR registration procedure normally takes no more than one month, and a registered application with Customs, if accepted, shall be valid for five years. This means that thanks to the request recorded in the Intellectual Property Rights Registration system at Customs, the Customs Officers are in charge of keeping watch for any counterfeits or any suspected infringing goods moving through any of the customs points under the Customs jurisdiction.

Of course Customs Authorities retain the right for the *ex officio* controlling of any good infringing Intellectual Property Rights at borders, but the registration of the right with the State Customs Committee facilitates largely their work.

2.3.3.1.1. Main principles for IPR registration with Customs

Rules for IPR registration established as per Article 279.2 of the Customs Code aim at permitting to find evidence of infringements during border operations.

For registration with Customs, the Intellectual Property Right holder should provide detailed information on his rights, and all his contacts.

Information, evidence (and intelligence whenever available), should be presented with the application, and are, in summary, as follows:

- A sample article bearing the Right registered with the Azerbaijan Intellectual Property Agency or a copy of a photographic or other likeness of the right, or of trademark, as it is used on genuine goods;

- The place of manufacture of genuine goods and the identity of the manufacturer(s); and;

- The name and principal business address of each foreign person or business entity authorized or licensed to use the IP right and a statement as to the authorized or licensed uses;

- The name and business address of the importer(s) and/or consignee(s) of the allegedly infringing goods, whenever available;

- A sufficiently detailed description of the suspect goods in order to make them readily recognizable by Customs, including a sample of the infringing article(s), a photograph or other likeness whenever available;

- The country or countries of origin of the suspect goods or the country or countries of manufacture of the allegedly infringing goods, whenever available;

- The name and principal business address of each foreign person or business entity involved in the manufacture and/or distribution of suspect goods, whenever available;

- The mode of transportation and the identity of the transporter(s) of the allegedly infringing goods, whenever available; and

The Customs office where it is anticipated that the suspect articles will be presented to Customs, if it is known.

Intellectual Property Right holders are encouraged to provide as much evidence as possible in their application in order to assist Customs' targeting. As a consequence of the Application for Registration of their IP Rights, and the Registration of their IP rights with Customs, Intellectual Property Right holders accept to be liable for the custody by Customs of suspected goods that would then result in not infringing their rights, and deposit with Customs authorities a monetary guarantee to this effect.

2.3.3.1.2. Acceptance of the Registration by the Registration Authority

The Customs Office having authority to receive, accept, or refuse, within one month from the application date, a registration request from an Intellectual Property Right holder, is the State Customs Committee of the Republic of Azerbaijan. Applicants, if deemed necessary, can challenge refusals of registration by the Committee. When the Registration is accepted, it produces its effects for five years. As mentioned already, this means that upon the request recorded in the Intellectual Property Right Registration system at Customs, the Customs Officers are in charge of keeping watch for any counterfeits or any suspected infringing goods moving through any of the customs points under the Customs jurisdiction.

2.3.3.2. How Border Control Measures take place effectively?

At borders of Azerbaijan, Customs Authorities will perform the following duties:

- Inspection and supervision for the imports or the exports of goods that are registered by Intellectual Property Right holders with Customs and are being suspected of infringing registered Intellectual Property rights: where Customs is satisfied, after consulting with the applicant if necessary, that the imported or exported goods are suspected to infringe an IP right covered by the Customs registered IP right, it shall suspend the clearance of the goods referred to;
- Customs will detain the infringing goods for up to 10 working days (this period of time can be extended by a further 10 working days on request) to enable the IP rights holder to initiate proceedings in the appropriate court, or to reach agreement with the owner for their disposal;
- Where there is no IPR registration in force with the State Customs Committee, Customs at their own initiative (through *ex-officio* action) may detain a suspected shipment to allow the Intellectual Property Right holder, following a notification from Customs, to lodge an application for suspension of the shipment;
- In any case, suspension cannot exceed 20 days, and Intellectual Property Right holders must initiate Court actions to sanction the infringer and possibly request damages within this period of time.

The release of goods that are declared together with the goods containing objects of intellectual property rights under suspicion of piracy and counterfeit in the same customs declaration, is carried out independently of the decision to suspend the release of the goods containing objects of intellectual property.

2.3.4. Results from Action taken by Customs at Borders

Action of Customs at Borders permits Right holders whose Intellectual Property Rights are infringed to initiate proceedings at Courts. They should launch within the prescribed lapse of time of Customs withholding (10 days, possibly further extended for 10 days) the proceedings in the appropriate Court, or in alternative reach an amicable agreement with the owner for their disposal.

Intellectual Property Right holders shall therefore get due protection thanks to the State Customs Committee of Azerbaijan, and Customs efficient action in Azerbaijan.

Information about Customs authorities responsible for activities against counterfeit products and for IP enforcement

Official Agency concerned with IP enforcement

- **State Customs Committee of the Republic of Azerbaijan**
- ***address of contact person for IP Border Enforcement***

supported by

- **Intellectual Property Agency of the Republic of Azerbaijan**
- ***address of contact person***

USEFUL HINTS FOR READERS

How fake products can be identified?

There are many tactics that can be adopted to avoid the circulation of Intellectual Property infringing goods:

Scrutinize the item *and* its packaging:

1 - Check the quality: is it badly made? In particular: ensure that the product, model numbers and equipment details are marked on the packaging. To confuse enforcement agencies and to avoid taxes, IP infringers often put "high value" infringing goods in boxes marked as containing cheap goods;

2 - Check that you are able to read the manufacturer's contact name; phone number and/or address. This type of information is rarely seen on the packaging of IP infringing products;

Carefully examine the logos and labels on products and boxes. Are there any typographical errors? Are safety and guarantee tags on the products? Pay close attention to spelling and/or grammatical errors – these frequently appear on the packaging containing IP infringing products;

Check the product transportation crates. Crates containing genuine products in their genuine boxes normally include bar codes, trademarks and sometimes even recycling instructions. It should be noted that most IP infringers try to avoid investing time and money reproducing this information;

Do research: check with contacts, or on the Internet to see if there are any reports of infringing similar products

In particular, do ALL this when health and safety is a priority.

Conclusion: Better protection of IPRs thanks to Customs

Acknowledging the importance of implementation of IP protection legislation for Azerbaijan's economic development and prosperity, a specific intellectual property legislation for customs enforcement is currently into force, jointly with applicable governmental implementing regulations: their objectives are, to make the IPR enforcement system fully consistent with international treaties on IPRs and to permit the country's economic progress.

In this respect, an intensified fight of counterfeiting and piracy, in the competence of Azerbaijan's State Customs Authority (SCC), will permit to achieve important results for the economy and development of Azerbaijan.

Definitions listed below are based on the definitions of the ECAP II funded “Regional Handbook on IPR Enforcement for Customs in ASEAN TRIPs Provisions on Border Enforcement (2005)” (Copyright: March 2007 ECAP II European Commission / European Patent Office), that are widely acknowledged at international level

“Intellectual Property” may be defined as those creations of the legal mind in relation to which the state confers upon individuals a statutory monopoly for a prescribed term to prevent their unauthorized exploitation. Intellectual property is usually divided into two branches: (i) “industrial property”; and (ii) copyright and the rights which neighbor upon copyright.

Industrial property rights are defined below:

A patent is an exclusive right awarded to an inventor of a product or process, which prevents others from making, selling, distributing, importing or using the invention, without license or authorization, for a fixed period of time (the standard is a minimum period of protection of 20 years).

Industrial designs protect the aesthetic aspects of an object (shape, texture, pattern, color), rather than its functional aspects. The standard is that an original design be eligible for protection from unauthorized use by others for a minimum of 10 years.

Trademarks provide exclusive rights to use distinctive, visible signs, such as brands, symbols, colors, letters, shapes or names to identify the producer of a product. In order to be eligible for protection a mark must be distinctive of the proprietor so as to identify the origin of a proprietor’s goods or services. The period of protection varies, but most countries provide for the renewal of registrations, so that protection can be indefinite. Protection against trademark counterfeiting and the consequent deception of consumers may also be provided through consumer protection or unfair competition legislation.

Geographical Indications identify the specific geographical origin of a product, and the associated qualities, reputation or other characteristics. They usually consist of the name of the place of origin. Azerbaijan, as many countries, requires protection for geographical indications to prevent unauthorized parties from using it to mislead the public as to the true origin of the product.

Plant breeders’ rights are granted to breeders of new, distinct, uniform and stable plant varieties. They normally offer protection for at least fifteen years.

Each of these categories of industrial property right is protectable through a system of registration. Thus for the purposes of enforcement, there will be a documentary record of the ownership of the relevant right.

Copyright on the other hand, exists upon the creation of a literary, artistic and musical work, as well as photographs, films and videos, computer programs, optical discs and music CDs. It prevents unauthorized reproduction, public performance, recording, broadcasting, translation, or adaptation. Copyright protection lasts (as a general rule) for the life of the creator plus 50 years (70 years (at least) in the US and EU). Most countries do not require that copyright protection be dependent upon registration, although in most countries

copyright collecting societies exist to collect the royalties of the various categories of copyright owners: book, magazine and newspaper publishers; music publishers; film and movie producers; software producers. Copyright owners usually register with these collecting societies, which therefore can provide documentary evidence of rights ownership.

Infringement: An intellectual property infringement occurs when an act is done which is inconsistent with the rights of a rights holder. Industrial property laws are territorial in scope, in that they apply only to rights that are registered within the country. This is relevant to the question of infringement. For example, an overseas company, which is a patent or trademark owner in its home country, can only complain about an infringement in a foreign country if its patent or trademark is registered in that foreign country. The situation is different in the case of copyright, which as a consequence of the Berne Convention, is enforceable by a copyright owner in all countries which are signatories to the Berne Convention.

The terms “counterfeiting” and “piracy” in relation to goods refer to the manufacture, distribution and sale of copies of goods, which have been made without the authority of the owner of the intellectual property. These goods are intended to appear to be so similar to the original as to be passed off as genuine items. This includes use of famous brands on pharmaceutical products, clothing, perfumes, tobacco, and household products, not manufactured by or on behalf of the owner of the trade mark, as well as exact copies of CDs containing music or software, which are traded in a form intended to be indistinguishable to ordinary consumers from the genuine product.

Acknowledgements

The author of the current Brochure, Laurent Manderieux, would wish to express his acknowledgements to the Government Authorities of Azerbaijan and to the European Union Project for their support in the preparation of this Publication.

The current Brochure builds on efforts made at International level, and in particular on the “Regional Handbook on IPR Enforcement for Customs in ASEAN TRIPs Provisions on Border Enforcement (2005) under the ECAP II; (a European Commission supported initiative)”, as well as on similar IP focused publications developed at national level, which provided very useful sources of references to its Author.

Bu nəşr Avropa İttifaqının maliyyə dəstəyi ilə ərsəyə gətirilmişdir. Onun məzmunu üçün Aİ tərəfindən maliyyələşən "ÜTT-yə üzvlük danışıqlarında İqtisadiyyat Nazirliyinin ÜTT Şöbəsinə dəstək və potensialın gücləndirilməsi" layihəsi təkliddə məsuliyyət daşıyır və məzmun Avropa İttifaqının yanaşmasını əks etdirmir.

Avropa İttifaqına üzv olan dövlətlər öz biliklərini, resurs və müqəddəratlarını bir-birinə bağlamağa qərar vermişdirlər. Onlar sabitlik, demokratiya və davamlı inkişaf yolunu birgə qurmuş, eyni zamanda öz mədəni müxtəlifliyini, tolerantlıq və azadlığını qoruyub saxlamışlar. Avropa İttifaqı nailiyyət və dəyərlərini öz sərhədlərindən kənarda olan ölkələr və xalqlar ilə bölüşməkdə qərarlıdır.