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MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta tal-15 ta' Novembru, 1999.

A BILL introduced by the Honourable John Dalli, M.P., Minister of Finance, and read the First time at the Sitting of the 15th November, 1999.

ATT ta' l-1999 biex jistabbilixxi miżuri li jirrigwardaw id-dhul ġewwa Malta, u l-esportazzjoni u ri-esportazzjoni minn Malta, ta' oġġetti li jikkontravvjenu d-drittijiet dwar Proprjetà Intellettuali.

AN ACT to establish measures relating to the importation into Malta, and the exportation and re-exportation from Malta, of goods in contravention of Intellectual Property rights.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

RICHARD J. CAUCHI
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT ta' l-1999 biex jistabbilixxi miżuri li jirrigwardaw id-dñul ġewwa Malta, u l-esportazzjoni u r-ri-esportazzjoni minn Malta, ta' oġġetti li jikkontravvjenu d-drittijiet dwar Proprjetà Intellettwali.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorita' ta' l-istess, hareġ b'liġi dan li ġej:—

1. Dan l-Att jista' jissejjah l-Att ta' l-1999 dwar *Drittijiet dwar Proprjetà Intellettwali (Miżuri Intrakonfini)*. Titolu fil-qosor

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx *Tifsir* xort'ohra:

“detentur ta' dritt” tfisser id-detentur ta' xi trade mark, privattiva jew dritt dwar proprjetà intellettwali jew kull persuna oħra li tkun awtorizzata li tuża dik *it-trade mark*, privattiva jew dawk id-drittijiet, jew rappreżentant tagħha. Id-detentur ta' dritt jew kull persuna oħra awtorizzata li tuża d-dritt tista' tkun rappreżentata minn persuna fiżika jew ġuridika. Dik il-persuna għandha tinkludi *collecting society*, li jkollha bi skop uniku jew prinċipali il-manigġ, jew l-amministrazzjoni tad-drittijiet ta' awtur jew drittijiet relatati;

“dikjarant” tfisser l-importatur, id-destinatarju, l-esportatur jew is-sid ta' l-oġġetti jew kull persuna oħra involuta fl-operazzjonijiet imsemmija fl-artikolu 4 ta' dan l-Att;

“dritt dwar proprjetà intellettuali” tfisser kull dritt imsemmi fit-tifsira ta’ oġġetti li jikkontravvjenu dritt dwar proprjetà intellettuali;

“oġġetti li jikkontravvjenu dritt dwar proprjetà intellettuali” tfisser:

(a) oġġetti falsifikati, jiġifieri:

(i) oġġetti, inkluż l-ippakkettjar tagħhom, li jkollhom fuqhom minghajr awtorizzazzjoni trade mark li tkun identika mat-*trade mark* validament reġistrata għar-rigward ta’ l-istess tip ta’ oġġetti, jew li ma tkunx tista’ tiġi distinta fl-aspetti essenzjali tagħha minn *trade mark* tali, u li b’daqstant tikkontravvjenu d-drittijiet tat-*trade mark* involuta taht il-liġi ta’ Malta;

(ii) kull simbolu ta’ *trade mark* (*logo*, *ticketta*, *sticker*, *brochure*, struzzjonijiet għall-użu jew dokument ta’ garanzija) sew jekk preżentat separatament sew jekk le, fl-istess ċirkostanzi bħalma jkunu l-oġġetti msemmija fil-paragrafu (i);

(iii) materjal tal-ippakkettjar li jkun fih it-*trade marks* ta’ oġġetti falsifikati, ippreżentati separatament fl-istess ċirkostanzi bħalma jkunu l-oġġetti msemmija fil-paragrafu (i);

(b) oġġetti mdahhla b’piraterija, jiġifieri:- oġġetti, li jkunu jew ikun fihom kopji magħmulin minghajr il-kunsens tad-detentur ta’ drittijiet ta’ awtur jew drittijiet relatati, jew tad-detentur ta’ dritt ta’ disinn, sew reġistrat taht il-liġi nazzjonali sew mhux, jew ta’ persuna debitament awtorizzata mid-detentur fil-pajjiż ta’ produzzjoni, fejn l-għemil ta’ dawk il-kopji, li kieku kien ikun sar f’Malta, kien jikkontravvjenu d-dritt involut taht il-liġi ta’ Malta;

(ċ) oġġetti li jikkontravvjenu privattiva taht il-liġi ta’ Malta.

(2) Kull materjal u tagħmir li l-użu predomnanti tagħhom ikun għall-manifattura ta’ *trade mark* falsifikata jew ta’ oġġetti li jkollhom fuqhom *trade mark* bħal dik, għall-manifattura ta’ oġġetti li jikkontravvjenu privattiva jew għall-manifattura ta’ oġġetti mdahhla b’piraterija għandhom jiġu ttrattati bħallikieku oġġetti li jikkontravvjenu dritt dwar proprjetà intellettuali, sakemm l-użu ta’ materjal u tagħmir bħal dak ikun jikkontravvjenu d-drittijiet tad-detentur ta’ dritt involut taht il-liġijiet ta’ Malta.

3. (1) Dan l-Att ma japplikax għal oġġetti li jkollhom fuqhom *trade mark* bil-kunsens tad-detentur ta' dik it-*trade mark* jew li jkunu protetti permezz ta' privattiva, drittijiet ta' awtur jew drittijiet relatati jew dritt ta' disinn u li jkunu ġew manifatturati bil-kunsens tad-detentur ta' dritt minkejja li setghu ġew imqeghda f'wahda mis-sitwazzjonijiet imsemmija fl-artikolu 4 ta' dan l-Att minghajr il-kunsens tad-detentur ta' dritt, *trade mark* jew privattiva.

Applikabilità ta' dan l-Att.

(2) Dan l-Att ma għandux japplika għal oġġetti msemmija fis-subartikolu (1) ta' dan l-artikolu meta l-oġġetti jkunu ġew manifatturati jew ikollhom *trade mark* taht kondizzjonijiet li ma jkunux dawk miftehma mad-detentur ta' drittijiet involuti.

(3) Dan l-Att ma għandux japplika għal oġġetti ta' xorta mhux kummerċjali li jkunu jinsabu fil-bagalji personali ta' vjaġġaturi fil-limiti stabbiliti għar-rigward ta' helsien minn dazju doganali.

4. Id-dhul ġewwa Malta, l-esportazzjoni jew ir-ri-esportazzjoni għal ċirkolazzjoni hielsa, importazzjoni temporanja, tqeghid ġewwa zona hielsa jew mahzen hieles ta' oġġetti li jinsabu li jkunu oġġetti li jikkontravjenu dritt ta' proprjetà intellettuali huwa pprojbit.

Projbizzjoni ta' oġġetti li jikkontravjenu ċertu drittijiet ta' proprjetà intellettuali.

5. (1) Id-detentur ta' dritt jista' jagħmel applikazzjoni bil-miktub lill-Kontrollur tad-Dwana sabiex l-awtoritajiet tad-Dwana jiehdu azzjoni meta oġġetti li jkunu allegati li jikkontravjenu drittijiet ta' proprjetà intellettuali jitqeghdu f'wahda mis-sitwazzjonijiet imsemmija fl-artikolu 4 ta' dan l-Att.

Applikazzjoni għal azzjoni mill-awtoritajiet tad-Dwana

(2) L-applikazzjoni msemmija fis-subartikolu (1) ta' dan l-artikolu għandhom jinkludu:

(i) deskrizzjoni dettaljata biżżejjed ta' l-oġġetti sabiex l-awtoritajiet tad-Dwana jkunu jistghu jagħrfuom;

u

(ii) prova li l-applikant ikun id-detentur ta' dritt għall-oġġetti involuti u li *prima facie* l-oġġetti jkunu jikkontravjenu dak id-dritt.

(3) Il-prova mehtieġa għall-iskop tas-subartikolu (2) ta' dan l-artikolu tista' tkun kif ġej:

(a) Meta jkun id-detentur ta' dritt innifsu li japplika —

(i) fil-każ ta' dritt li jkun registrat jew li dwaru tkun saret applikazzjoni bhala *trade mark*, privattiva jew dritt ta' disinn: prova tar-registrazzjoni jew ghemil ta' l-applikazzjoni ma' l-uffiċċju rilevanti;

(ii) fil-każ ta' dritt ta' awtur, dritt relatat jew dritt ta' disinn li ma jkunx wiehed registrat jew li dwaru ma tkunx saret applikazzjoni: kull prova li wiehed ikun l-awtur jew l-istatus tal-persuna bhala d-detentur oriġinali.

(b) Meta l-applikazzjoni ssir minn xi persuna ohra li tkun awtorizzata li tuża dritt ta' proprjetà intellettuali, b'żieda mal-prova mehtieġa taht il-paragrafu (a) ta' dan is-subartikolu: ghandu jingiebb ukoll jew ikun ikkwotat b'mod suffiċjenti d-dokument li bis-sahha tiegħu l-persuna tkun awtorizzata li tuża d-dritt involut.

(c) Meta l-applikazzjoni ssir minn rappreżentant tad-detentur ta' dritt jew ta' xi persuna ohra awtorizzata li tuża dritt ta' proprjetà intellettuali, b'żieda mal-prova mehtieġa taht il-paragrafi (a) u (b) ta' dan is-subartikolu, ghandha tingiebb ukoll prova li dak ir-rappreżentant ikun jista' jaġixxi bhala tali.

(4) Id-detentur ta' dritt ghandu wkoll jipprovdi kull informazzjoni pertinenti li jista' jkollu li permezz tagħha l-Kontrollur tad-Dwana jkun jista' jiddeċiedi filwaqt li jkollu konozzenza shiha tal-fatti, madankollu bla ma dik l-informazzjoni tkun xi kondizzjoni ta' ammissibilità ta' l-applikazzjoni.

(5) Fil-każ ta' oġġetti mdahhla b'piraterija jew ta' oġġetti li jikkontravvjenu xi privattiva, dik l-informazzjoni ghandha, kulmeta jkun possibbli, tinkludi bhala indikazzjoni:

(i) il-post fejn ikunu jinsabu l-oġġetti jew id-destinazzjoni ppjanata għalihom;

(ii) partikolaritajiet li jkunu jidentifikaw il-kunsinna jew il-pakketti;

(iii) id-data skedata għall-wasla jew it-tluq ta' l-oġġetti;

(iv) il-mezz ta' trasport użat;

(v) l-identità ta' l-importatur, esportatur jew detentur.

(6) L-applikazzjoni ghandha tkun tispeċifika f'kemm żmien il-Kontrollur tad-Dwana jkun mehtieġ li jiehu azzjoni.

(7) (i) L-applikant ikun responsabbli li jkopri l-ispejjeż amministrattivi li jsiru fl-iskrutinju ta' l-applikazzjoni.

(ii) L-applikant jew ir-rappreżentant tiegħu jkun ukoll responsabbli li jkopri l-ispejjeż amministrattivi li jsiru fl-implimentazzjoni tad-deċiżjoni tal-Kontrollur tad-Dwana msemmija f'dan l-artikolu.

(iii) Dawk l-ispejjeż għandhom jiġu deċiżi mill-Kontrollur tad-Dwana u ma għandhomx ikunu sproporzjonati mas-servizz provdut.

(8) Il-Kontrollur tad-Dwana għandu jiskrutinja l-applikazzjoni u għandu minnufih javża lill-applikant bil-miktub dwar dak li huwa jiddeċiedi.

(9) Meta l-Kontrollur tad-Dwana jilqa' l-applikazzjoni, huwa għandu jispeċifika x'ikun il-perijodu li matulu l-awtoritajiet tad-Dwana ma għandhomx ihallu li jsir ir-rilaxx ta' l-oġġetti, jew iżommu l-oġġetti, sakemm jinbdew il-proċedimenti fil-qorti ċivili. Jekk issir applikazzjoni mid-detentur ta' dritt, dak il-perijodu jista' jittawwal mill-Kontrollur tad-Dwana.

(10) Meta applikazzjoni tinċahad, għandhom jingħataw ir-raġunijiet għal dak iċ-ċid li jkun jista' jsir appell minnu quddiem il-Ministru responsabbli għad-Dwana fi żmien tlitt ijiem tax-xogħol minn meta jiġi notifikat l-avviż dwar dak iċ-ċid lill-applikant.

(11) L-appell imsemmi fis-subartikolu (10) ta' dan l-artikolu għandu:

(i) jkun bil-miktub u jkun fih dikjarazzjoni qasira tal-fatti u jiddikjara xi jkunu r-raġunijiet għall-appell;

(ii) jiġi notifikat lill-Kontrollur tad-Dwana li jkollu tlitt ijiem tax-xogħol biex iwieġeb minn meta jasallu l-appell.

(12) Il-Kontrollur tad-Dwana jista' jehtieg lid-detentur ta' dritt, meta tintlaqa' l-applikazzjoni tiegħu, li jipprovdi garanzija li tkun:

(i) tkopri kull obbligu li jista' jinqala' min-naħa tal-Kontrollur tad-Dwana għar-rigward ta' persuni involuti f'xi waħda mill-operazzjonijiet imsemmija fl-artikolu 4 meta l-proċedura mibdija skond l-artikolu 5 ma titkompliex minhabba f'xi att jew ommissjoni tad-detentur ta' dritt jew meta l-oġġetti involuti wara jinstabu li ma jkunux l-oġġetti li jikkontravvjenu dritt ta' proprjetà intellettuali.

(ii) tiżgura hlas ta' l-ispejjeż maghmulin skond dan l-Att, fit-tiżmim ta' l-oġġetti taht kontroll doganali skond l-artikolu 5.

(13) Id-detentur ta' dritt ghandu jinforma lill-Kontrollur tad-Dwana minnufih jekk id-dritt tieghu ma jibqax iktar registrat validament jew jekk dan jiskadi.

(14) Is-subartikoli (1) sa (13) ta' dan l-artikolu ghandhom japplikaw *mutatis mutandis* għall-estenzjoni tad-deċiżjoni dwar l-applikazzjoni originali.

Azzjoni
ex officio.

6. Meta, filwaqt li jkunu qed isiru skrutinji taht xi wahda mill-proċeduri doganali msemmija fl-artikolu 4 ta' dan l-Att u qabel ma ssir jew tiġi approvata applikazzjoni mid-detentur ta' dritt, jkun jidher b'mod *prima facie* ċar lill-Kontrollur tad-Dwana li l-oġġetti jkunu oġġetti li jikkontravvjenu dritt ta' proprjetà intellettuali, il-Kontrollur tad-Dwana jista' javża lid-detentur ta' dritt, meta dan ikun maghruf, li jista' jkun qed issir kontravvenzjoni ta' dak id-dritt.

Il-Kontrollur tad-Dwana jista' jissospendi r-rilaxx ta' l-oġġetti jew iżommhom għal perjodu ta' hamest ijiem tax-xogħol sabiex id-detentur tad-dritt ikun jista' jagħmel applikazzjoni għal azzjoni skond l-artikolu 5 ta' dan l-Att.

Kondizzjonijiet li
jirregolaw l-azzjoni
tal-Kontrollur tad-
Dwana.

7. (1) Minghajr preġudizzju għad-dispożizzjonijiet ta' l-artikolu 6 ta' dan l-Att, meta l-Kontrollur tad-Dwana jkun sodisfatt, wara li jikkonsulta lill-applikant meta jkun hekk mehtieg, li oġġetti imqegħda f'wahda mis-sitwazzjonijiet imsemmija fl-artikolu 4 ta' dan l-Att jkunu jikkorrispondu mad-deskrizzjoni ta' oġġetti li jikkontravvjenu dritt ta' proprjetà intellettuali, huwa għandu jissospendi r-rilaxx ta' l-oġġetti jew iżommhom u l-Kontrollur għandu minnufih jgħarraf lid-dikjarant u lill-persuna li tkun applikat għall-azzjoni li jkollha tittiehed, jekk ikun il-każ.

(2) Bla hsara għal kull liġi dwar il-protezzjoni ta' data personali, segretezza kummerċjali u industrijali, u kunfidenzjalità professjonali u amministrattiva, il-Kontrollur tad-Dwana għandu javża lid-detentur ta' dritt, meta d-detentur innifsu jitlob dan, bl-isem u l-indirizz tad-dikjarant u, jew ir-riċevitur sabiex jassisti lid-detentur ta' dritt biex ikun jista' jingiebu f'qagħda li jibda proċedimenti fil-qorti li bihom ikun jista' jhars l-interessi tieghu.

(3) Minghajr preġudizzju għat-thaddim ta' kull liġi li tirrigwarda l-harsien ta' informazzjoni kunfidenzjali, il-Kontrollur tad-Dwana għandu jagħti lill-applikant u lill-persuni involuti f'xi wahda mill-operazzjonijiet imsemmija fl-artikolu 4 ta' dan l-Att l-opportunità

li jispezzjonaw dawk l-oġġetti li jkun ġie sospiż ir-rilaxx tagħhom jew li jkunu inżammu. Waqt l-eżami ta' l-oġġetti, l-Kontrollur tad-Dwana jista' jiehu kampjuni sabiex jgħaġġel il-proċedura li jkollha x'taqsam ma' dawk l-oġġetti.

(4) Jekk, fi żmien għaxart ijiem tax-xogħol wara li l-applikant ikun ġie notifikat b'avviż tas-sospensjoni tar-rilaxx ta' oġġetti jew tat-tiżmim tagħhom, wara deċiżjoni tal-Kontrollur tad-Dwana magħmula skond is-subartikolu (9) ta' l-artikolu 5 ta' dan l-Att, il-Kontrollur tad-Dwana ma jkunx inġhata prova li jkunu nb dew proċedimenti fil-qorti ċivili li jwasslu għal deċiżjoni sostantiva dwar il-merti tal-każ jew inkella jekk il-Kontrollur tad-Dwana ma jkunx adotta provvedimenti jew miżuri li jtaflu s-sospensjoni tar-rilaxx ta' l-oġġetti, dawk l-oġġetti għandhom jiġu rilaxxati, sakemm tkun tharset kull kondizzjoni ohra għall-importazzjoni jew l-esportazzjoni. Dak it-terminu jista' jittawal b'għaxart ijiem tax-xogħol ohra mill-Kontrollur tad-Dwana:

Iżda jekk ikunu nb dew proċedimenti f'qorti ċivili dwar oġġetti li jkun inżamm ir-rilaxx tagħhom mill-Kontrollur tad-Dwana taht dan l-Att, il-Qorti tista', fuq talba ta' xi parti, tirrevedi d-deċiżjoni tal-Kontrollur tad-Dwana bil-ghan li tiddeċiedi jekk l-oġġetti għandhomx jiġu rilaxxati jew assolutament jew taht dawk il-kondizzjonijiet li l-Qorti tista' timponi.

(5) Fil-każ ta' oġġetti b'suspett li jikkontravvjenu xi privattiva jew dritt ta' disinn, is-sid, l-importatur jew ir-riċevitur ta' l-oġġetti ikunu jistgħu jieħdu l-oġġetti involuti b'rilaxx jew ikollhom it-tiżmim ta' l-oġġetti revokat wara li tingħata garanzija, sakemm:

(a) il-Kontrollur tad-Dwana jkun ġie mgharraf fit-terminu msemmi fis-subartikolu (4) ta' dan l-artikolu li jkunu nb dew proċedimenti fil-qorti ċivili li jwasslu għal deċiżjoni sostantiva dwar il-merti tal-każ,

(b) meta jiskadi t-terminu, il-Qorti ma tkunx imponiet miżuri temporanji, u

(ċ) tkun intemmet kull formalità doganali.

Il-garanzija għandha tkun bizzejjed biex thares l-interessi tad-detentur ta' dritt u jew issir bhala depożitu li jsir għand il-Kontrollur tad-Dwana ta' dak l-ammont li jista' jiġi stabbilit mill-Kontrollur tad-Dwana jew bhala garanzija minn xi bank li l-Kontrollur tad-Dwana jaċċetta, ta' dak l-ammont li jista' jiġi stabbilit mill-Kontrollur tad-Dwana. L-ghoti tal-garanzija għandu jkun minghajr preġudizzju għal kull rimedju iehor li jkollu d-detentur ta' dritt.

(6) Meta l-kwistjoni tkun giet riferita lill-Kontrollur tad-Dwana b'mod differenti milli b'inizjattiva tad-detentur ta' dritt, il-garanzija li tithallas mill-importatur, mir-riċevitur, mill-esportatur jew mis-sid ta' l-oġġetti ghandha tkun rilaxxata jekk min japplika ghas-sospensjoni tar-rilaxx ta' l-oġġetti jew ghat-tiżmim taghhom ma jeżerċitax id-dritt tiegħu li jibda proċedimenti legali fi żmien għoxrin gurnata tax-xogħol minn meta jiġi avżat bis-sospensjoni tar-rilaxx jew bid-detenzjoni:

Iżda dak il-perijodu jista' jittawwal sa massimu ta' tletin jum fid-diskrezzjoni tal-Kontrollur tad-Dwana.

(7) Il-kondizzjonijiet li jirregolaw il-ħażna ta' l-oġġetti matul il-perijodu ta' sospensjoni ta' rilaxx jew tiżmim, ghandhom ikunu skond dak li jiġi stabbilit mill-Kontrollur tad-Dwana.

8. (1) Fi proċedimenti li jkollhom x'jaqsmu ma' l-infurzar tal-jeddijiet tad-detentur ta' dritt, il-Qorti ghandha:

(a) b'regola ġenerali, tordna lill-Kontrollur tad-Dwana li jiddisponi minn oġġetti stabbiliti bhala oġġetti li jikkontravvjenu dritt ta' proprjeta' intellettwali 'l hinn mill-kanali tal-kummerċ b'dak il-mod li jipprekludu xi hsara lid-detentur ta' dritt jew tordna lill-Kontrollur tad-Dwana li jiddistruggi dawk l-oġġetti, f'kull każ mingħajr ebda kumpens lill-, u ghas-spejjeż tal-importatur, esportatur jew sid ta' l-oġġetti;

(b) tiehu, jew tordna lill-Kontrollur tad-Dwana li jiehu dwar dawk l-oġġetti, kull miżura oħra li jkollha l-effett li effettivament iċċaħhad lill-persuni involuti mill-benefiċċji ekonomiċi tat-transazzjoni.

Salv f'każijiet eċċezzjonali, it-tnehhija sempliċi tat-*trade marks*, li jkunu twaħhlu ma' l-oġġetti falsifikati mingħajr awtorizzazzjoni, ma ghandhomx jitqiesu bhala li jkollhom dak l-effett.

Iżda fl-ordnar ta' miżuri li ghandhom jittiehdu taht dan l-artikolu, il-Qorti ghandha tqis kif dovut, il-htieġa għal proporzjonalità bejn il-gravità tal-kontravvenzjoni u r-rimedji li jkunu ordnati kif ukoll l-interessi ta' terzi.

(2) B'żieda ma' l-informazzjoni mogħtija skond is-subartikolu (2) ta' l-artikolu 7 ta' dan l-Att u taht il-kondizzjonijiet stipulati fih, il-Kontrollur tad-Dwana ghandu jgħarraf lid-detentur ta' dritt, meta hekk mitlub, bl-ismijiet u l-indirizzi tal-kunsinnatarju, ta' l-importatur jew esportatur u tal-manifattur ta' l-oġġetti stabbiliti bhala

Provvedimenti li japplikaw għal oġġetti li jirriżultaw li jkunu oġġetti li jikkontravvjenu dritt ta' proprjeta' intellettwali.

oġġetti li jikkontravvjenu dritt ta' proprjetà intellettuali u bil-kwantità ta' l-oġġetti msemmija.

9. (1) Id-detentur ta' dritt ma jkollux jedd għal kumpens meta l-oġġetti ma jkunux identifikati mill-awtoritajiet tad-Dwana u jiġu rilaxxati jew meta ma tittiehed ebda azzjoni għat-tizim tagħhom jew biex jinżamm ir-rilaxx tagħhom. Eżenzjonijiet minn responsabbiltà.

(2) L-eżerċizzju tas-setgħat lilo mogħtija għar-rigward ta' oġġetti falsifikati jew imdahhla b'piraterija ma jirrendux lill-Kontrollur tad-Dwana responsabbli lejn il-persuni involuti fl-operazzjonijiet imsemmija fl-artikolu 4, jekk dawn il-persuni jgarrbu xi hsara jew telf bhala riżultat ta' l-azzjoni tagħhom.

10. Fi proċedimenti li għandhom x'jaqsmu mal-provvedimenti ta' dan l-Att, il-Qorti jkollha jedd tordna lill-parti, li fuq talba tagħha jkunu ttiehdu l-miżuri taħt dan l-Att u li tkun instabet bhala li abbużat il-proċeduri ta' infurzar, li tipprovi lil xi parti li tkun għet milquta jew miżmuma hażin, kumpens adegwat għall-hsara mgarrba kaġun ta' dak l-abbuż. Dak il-kumpens jista' wkoll jinkludi kumpens għal kull nefqa u spiża legali u ġudizzjarji li ssir. Abbuż minn proċeduri.

11. (1) Jekk xi persuna timporta jew tikkaguna li jiġu importati xi oġġetti li jkunu jikkontravvjenu dritt ta' proprjeta' intellettuali, dik il-persuna tista' tehel għal kull reat bħal dak, multa ekwivalenti għad-doppju tal-valur ta' dawk l-oġġetti. Reati u pjeni.

(2) Kull proċediment taħt dan l-artikolu għandu jittiehed quddiem il-Qorti tal-Maġistrati u għandu jkun skond id-dispożizzjonijiet tal-Kodiċi Kriminali li jirregolaw il-proċedura quddiem dik il-Qorti jew Qorti ta' Ġudikatura Kriminali u l-ghoti u l-eżekuzzjoni tal-pieni minnha imposti.

(3) Minkejja d-dispożizzjonijiet tal-Kodiċi Kriminali, l-Avukat Ġenerali għandu dejjem ikollu dritt ta' appell quddiem il-Qorti ta' l-Appell Kriminali minn kull sentenza mogħtija mill-Qorti tal-Maġistrati għar-rigward ta' proċedimenti kriminali li jsiru bis-saħħa ta' dan l-Att.

Għanijiet u Raġunijiet

L-għan ta' l-Abbozz hu sabiex jagħmel provvedimenti dwar li jinżamm ir-rilaxx ta' oġġetti mill-Kontrollur tad-Dwana meta jiġi pretiż li dak ir-rilaxx jista' jikkontravvjenu d-drittijiet ta' proprjetà intellettuali ta' xi hadd iehor.

**A BILL
entitled**

AN ACT to establish measures relating to the importation into Malta, and the exportation and re-exportation from Malta, of goods in contravention of Intellectual Property rights.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. This Act may be cited as the Intellectual Property Rights (Cross-Border Measures) Act, 1999.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:

“goods infringing an intellectual property right” means:

(a) counterfeit goods, namely:

(i) goods, including the packaging thereof, bearing without authorisation a trademark which is 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 trademark, and which thereby infringes the rights of the holder of the trademark in question under Maltese law;

(ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document) whether presented separately or not, in the same circumstances as the goods referred to in paragraph (i);

(iii) packaging materials bearing the trademarks of counterfeit goods, presented separately in the same circumstances as the goods referred to in paragraph (i);

(b) pirated goods, namely: goods, which are or embody copies made without the consent of the holder of the copyright or neighbouring rights, or of the holder of a design right, whether registered under national legislation or not, or of a person duly authorised by the holder in the country of production, where the making of those copies, if it had taken place in Malta, would have infringed the right in question under Maltese law;

(c) goods infringing a patent under Maltese law;

“declarant” means the importer, the consignee, the exporter or the owner of the goods or any other person involved in the operations mentioned in section 4 of this Act;

“holder of a right” means the holder of a trademark, a patent or an intellectual property right or any other person authorised to use that trademark, patent or right, or a representative thereof. The holder of a right or any other person authorised to use the right may be represented by a natural or legal person. Such a person shall include a collecting society, which has as its sole or principal purpose the management, or administration of copyright or neighbouring rights;

“intellectual property right” means any right referred to in the definition of goods infringing an intellectual property right.

(2) Materials and implements the predominant use of which has been for the manufacture of a counterfeit trademark or of goods bearing such a trademark, for the manufacture of goods infringing a patent or for the manufacture of pirated goods shall be treated as goods infringing an intellectual property right, provided that the use of such materials and implements infringes the rights of the holder of the right in question under Maltese law.

3. (1) This Act shall not apply to goods which bear a trademark with the consent of the holder of that trademark or which are protected by a patent, by a copyright or neighbouring right or by a design right and which have been manufactured with the consent of the holder of

Applicability of the Act.

the right, notwithstanding that they may have been placed in one of the situations referred to in section 4 of this Act without the consent of the holder of the right, trademark or patent.

(2) This Act shall not apply to goods referred to in subsection (1) of this section when the goods have been manufactured or bear a trademark under conditions other than those agreed with the holder of the rights in question.

(3) This Act shall not apply to goods of a non-commercial nature contained in travellers' personal luggage within the limits laid down in respect of relief from customs duty.

Prohibition of goods infringing certain intellectual property rights.

4. The entry into Malta, export or re-export, release for free circulation, temporary importation, placing in a free zone or free warehouse of goods found to be goods infringing an intellectual property right shall be prohibited.

Application for action by the customs authorities.

5. (1) The holder of a right may lodge an application in writing with the Comptroller of Customs for action by the Customs authorities where goods alleged to infringe intellectual property rights are placed in one of the situations referred to in section 4 of this Act.

(2) The application referred to in subsection (1) of this section shall include:

(i) a sufficiently detailed description of the goods to enable the Customs authorities to recognise them;

and

(ii) proof that the applicant is the holder of the right for the goods in question and that prima facie the goods infringe that right.

(3) The proof required for the purpose of subsection (2) of this section may be as follows:

(a) Where the holder of the right applies himself:

(i) in the case of a right that is registered or for which an application has been lodged such as a trademark, patent or design right: proof of registration or lodging of the application with the relevant office;

(ii) in the case of a copyright, neighbouring right or design right that is unregistered or for which an application

has not been lodged: any proof of authorship or the person's status as original holder.

(b) Where the application is made by any other person authorised to use an intellectual property right, in addition to the proof required under paragraph (a) of this subsection: the document by virtue of which the person is authorised to use the right in question shall also be produced or sufficiently quoted.

(c) Where the application is made by a representative of the holder of a right or of any other person authorised to use an intellectual property right, in addition to the proof required under paragraphs (a) and (b) of this subsection, proof of authorisation to act shall also be produced.

(4) The holder of the right shall also provide all other pertinent information available to him to enable the Comptroller of Customs to take a decision in full knowledge of the facts without, however, that information being a condition of admissibility of the application.

(5) In the case of pirated goods or of goods infringing patents, the said information shall, wherever possible, include by way of indication:

(i) the place where the goods are situated or the intended destination;

(ii) particulars identifying the consignment or packages;

(iii) the scheduled date of arrival or departure of the goods;

(iv) the means of transport used;

(v) the identity of the importer, exporter or holder.

(6) The application shall specify the length of the period during which the Comptroller of Customs is requested to take action.

(7) (i) The applicant shall be responsible to cover the administrative costs incurred in dealing with the application.

(ii) The applicant or his representative shall also be responsible to cover the administrative costs incurred in implementing the decision of the Comptroller of Customs referred to in this section.

(iii) Such costs shall be determined by the Comptroller of Customs and shall not be disproportionate to the service provided.

(8) The Comptroller of Customs shall deal with the application and shall forthwith notify the applicant in writing, of his decision.

(9) Where the Comptroller of Customs grants the application, he shall specify the period during which the Customs authorities shall withhold the release of or detain the goods pending the initiation of civil judicial proceedings. That period may, upon application by the holder of the right, be extended by the Comptroller of Customs.

(10) Any refusal to grant an application shall give the reasons for refusal and shall be subject to appeal to the Minister responsible for Customs within three working days from notice to the applicant of the refusal.

(11) The appeal referred to in subsection (10) of this section shall:

(i) be in writing and shall contain a brief statement of the facts and state the reasons for the appeal;

(ii) be notified to the Comptroller of Customs who shall reply within three working days from receipt of the appeal.

(12) The Comptroller of Customs may require the holder of a right, where his application has been granted, to provide a security:

(i) to cover any possible liability on the part of the Comptroller of Customs vis-à-vis the persons involved in one of the operations referred to in section 4 where the procedure initiated pursuant to section 5 is discontinued owing to an act or omission by the holder of the right or where the goods in question are subsequently found not to be goods infringing an intellectual property right;

(ii) to ensure payment of the costs incurred in accordance with this Act, in keeping the goods under Customs control pursuant to section 5.

(13) The holder of the right shall inform the Comptroller of Customs forthwith if his right is no longer validly registered or if it expires.

(14) Subsections (1) to (13) of this section shall apply *mutatis mutandis* to the extension of the decision on the original application.

6. Where, in the course of checks made under one of the Customs procedures referred to in section 4 of this Act and before an application by the holder of the right has been lodged or approved, it appears *prima facie* evident to the Comptroller of Customs that goods are goods infringing an intellectual property right, the Comptroller of Customs may notify the holder of the right, where known, of a possible infringement thereof. Ex officio action.

The Comptroller of Customs may suspend release of the goods or detain them for a period of five working days to enable the holder of the right to lodge an application for action in accordance with section 5 of this Act.

7. (1) Without prejudice to the provisions of section 6 of this Act, where the Comptroller of Customs is satisfied, after consulting the applicant where necessary, that goods placed in one of the situations referred to in section 4 of this Act correspond to the description of goods infringing an intellectual property right, he shall suspend release of the goods or detain them and the Comptroller of Customs shall forthwith inform the declarant and the person who applied for action to be taken, if any. Conditions governing action by the Comptroller of Customs.

(2) Subject to any law on the protection of personal data, commercial and industrial secrecy, and professional and administrative confidentiality, the Comptroller of Customs shall notify the holder of the right, at his request, of the name and address of the declarant and, or the consignee so as to assist the holder of the right to be put in position to initiate judicial proceedings to safeguard his interests.

(3) Without prejudice to the operation of any law regarding the protection of confidential information, the Comptroller of Customs shall afford the applicant and the persons involved in any of the operations referred to in section 4 of this Act the opportunity to inspect the goods, the release of which has been suspended or which have been detained. When examining the goods the Comptroller of Customs may take samples in order to expedite the procedure related to the said goods.

(4) If, within a period of ten working days after the applicant has been served with notice of the suspension of release of goods or of detention thereof further to a decision of the Comptroller of Customs taken in terms of subsection (9) of section 5 of this Act the Comptroller of Customs has not been given proof that civil judicial proceedings leading to a substantive decision on the merits of the case have been

initiated or if the Comptroller of Customs has not taken provisions or measures prolonging the suspension of the release of the goods, the goods shall be released, provided all other conditions for importation or exportation have been complied with. The said time limit may be extended by another ten working days by the Comptroller of Customs:

Provided that, if civil judicial proceedings have been initiated in connection with goods, the release of which has been detained by the Comptroller of Customs under this Act, the Court may, at the request of any party, review the decision of the Comptroller of Customs with a view to determining whether the goods should be released either absolutely or under such conditions as the Court may impose.

(5) In the case of goods suspected of infringing patents or design rights, the owner, the importer or the consignee of the goods shall be able to have the goods in question released or their detention revoked against provision of a security provided that:

(a) the Comptroller of Customs has been informed within the time limit referred to in subsection (4) of this section that civil judicial proceedings have been initiated, leading to a substantive decision on the merits of the case,

(b) on expiry of the time limit, the Court has not imposed interim measures, and

(c) all the Customs formalities have been completed.

The security must be sufficient to protect the interests of the holder of the right and shall be either in the form of a deposit made in the hands of the Comptroller of Customs of such amount as may be fixed by the Comptroller of Customs or in the form of a guarantee by a bank acceptable to the Comptroller of Customs, of such amount as may be fixed by the Comptroller of Customs. Provision of the security shall be without prejudice to the other remedies open to the holder of the right.

(6) Where the matter has been referred to the Comptroller of Customs other than on the initiative of the holder of the right, the security paid by the importer, the consignee, the exporter or the owner of the goods shall be released if the person applying for suspension of release of the goods or detention thereof does not exercise his right to institute legal proceedings within twenty working days from the date on which he is notified of the suspension of release or detention:

Provided that such period may be extended to a maximum of thirty days at the discretion of the Comptroller of Customs.

(7) The conditions governing storage of the goods during the period of suspension of release or detention shall be as determined by the Comptroller of Customs.

8. (1) In proceedings related to the enforcement of the rights of the holder of a right the Court shall:

Provisions applicable to goods found to be goods infringing an intellectual property right.

(a) as a general rule, order the Comptroller of Customs to dispose of goods established to be goods infringing an intellectual property right outside the channels of commerce in such a way as to preclude injury to the holder of the right or order the Comptroller of Customs to destroy such goods, in any case without compensation of any sort to and, at the cost of, the importer, exporter or owner of the goods;

(b) take, or order the Comptroller of Customs to take in respect of such goods, any other measures having the effect of effectively depriving the persons concerned of the economic benefits of the transaction.

Save in exceptional cases, simply removing the trademarks, which have been affixed to the counterfeit goods without authorisation, shall not be regarded as having such effect.

Provided that in ordering measures to be taken under this section the Court shall take due account of the need for proportionality between the seriousness of the infringement and the remedies ordered as well as of the interests of third parties.

(2) In addition to the information given pursuant to subsection (2) of section 7 of this Act and under the conditions laid down therein, the Comptroller of Customs shall inform the holder of the right, upon request, of the names and addresses of the consignor, of the importer or exporter and of the manufacturer of the goods established to be goods infringing an intellectual property right and of the quantity of the goods in question.

9. (1) The holder of a right shall not be entitled to compensation where goods are not detected by the customs authorities and are released or where no action is taken to detain them or to withhold release thereof.

Exemptions from liability.

(2) Exercise by the Comptroller of Customs of the powers conferred upon him with regards to counterfeit or pirated goods shall

not render him liable towards the persons involved in the operations referred to in section 4, in the event of their suffering loss or damage as a result of their action.

Abuse of
procedures.

10. In proceedings related to the provisions of this Act the Court shall be entitled to order the party at whose request measures were taken under this Act and who is found to have abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered due to such abuse. Such compensation may also include compensation for legal and judicial costs and fees incurred.

Offences and
penalties.

11. (1) If any person shall import or cause to be imported any goods infringing an intellectual property right, such person shall be liable for every such offence to a fine (multa) equivalent to double the value of such goods.

(2) All proceedings under this section shall be taken before the Court of Magistrates and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said Court or a Court of Criminal Judicature and the award and execution of the punishments thereby imposed.

(3) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates in respect of criminal proceedings ensuing out of this Act.

Objects and Reasons

The object of the Bill is to make provisions for the withholding of the release of goods by the Comptroller of Customs where it is claimed that the same may infringe the intellectual property rights of another party.