



## Transit of counterfeit goods: a Turkish perspective

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### TURKEY

Legal updates: case law analysis and intelligence

- There is uncertainty as to whether goods in transit may fall within the offence of trademark infringement pursuant to the relevant legislation
- In 2020 the Criminal General Assembly of the Supreme Court issued a significant precedent in this respect
- In light of this decision, it is expected that the courts will consider that actions in a recent case constitute a trademark infringement offence

Turkey is located in an exceptionally strategic location, on the trade routes between Europe, the Middle East and CIS countries. Millions of goods pass through the Turkish territory under the transit regime within the scope of the commercial activities between, or exports to, these countries. As a result, Turkey has inadvertently become a hub for the transit of counterfeit products, alongside original ones.

### Legal framework

Currently, the legal position on the transit of counterfeit goods is controversial. Article 30 of the Intellectual Property Code, which regulates trademark infringement offences, stipulates as follows:

“

*Anyone who produces goods or offers services, offers for sale and sells, **imports and exports**, purchases, keeps, **transports** or stores for commercial purposes, while infringing trademark rights belonging to someone else by means of quotation or confusion, shall be sentenced to imprisonment between one year and three years and a judicial fine of up to 20,000 days. [emphasis added]*

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The concept of 'transit' is not clearly defined in the above-mentioned provision, even though the acts of importing and exporting are included. Since this provision of the IP Code refers only to the acts of importing and exporting, there is uncertainty as to whether goods in transit may fall within the offence of trademark infringement. The Transportation Act also defines trademark infringement, although some courts interpret this definition as 'transportation within Turkey' and not as 'transit'.

Apart from the IP Code, 'transit' is also defined and regulated by the Customs Regulations issued under Article 57 of the Customs Code. Article 101 of the Customs Regulations provides that the scope of IP protection for the goods is "subjected to a customs-approved process or use including goods which are changing vehicles in the customs zone of Turkey". Nevertheless, the Customs Regulations give power to the Customs Directorates to suspend shipments only for 10 working days. The rights holders must obtain a permanent seizure order from the Criminal Court of Peace or a preliminary injunction decision from the Civil Courts within this legal period, otherwise the goods will be released.

### Supreme Court precedent

The Criminal General Assembly of the Supreme Court has recently established a critical precedent, ruling that the transit trade of counterfeit products shall not constitute an offence pursuant to the regulation in force before 2017, but will constitute an offence under the Industrial Property Law, which came into force in 2017.

Below is a translation of the relevant part of the Criminal General Assembly's unanimous decision in Case 2017/67 E 2020/253 K, issued on 2 June 2020:

“

*Having evaluated as a whole the relevant provisions of the Customs Law No 4458, the transit declaration and the defences of the defendants, it should be accepted that the accused's action does not comply with Article 61/A of the abrogated Decree Law No 556, but remained within the scope of the optional actions listed in the first paragraph of Article 30 of the Industrial Property Law No 6769, which was published in the Official Gazette on 10 January 2017 under No 29944 and entered into force after the date of the crime.* [emphasis added]

”

### Recent case

In a recent matter, a large amount of counterfeit products exported from a third country to another were temporarily suspended by the Customs Directorate located at the Turkish-Georgian border, based on a suspicion of trademark infringement and following an application in the brand owner's name. Both the local criminal court and the Civil IP Court ordered the permanent seizure of the products in June 2022. The legal proceedings in this matter remain pending.

Although there are contradictory opinions regarding the transportation of counterfeit goods under the transit regime through Turkish Customs, it is expected that the courts will consider that this action constitutes a trademark infringement offence in light of the decision of the Criminal General Assembly of the Supreme Court.

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