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Border measures and anti-counterfeiting strategies in Türkiye: a practical guide for international trademark owners

Asım Okat of IPRTR outlines Türkiye's border-enforcement framework for international trademark owners, covering customs recordation, detention and destruction, civil and criminal remedies, key deadlines, and requirements for foreign rights holders. He highlights practical risks and steps brand owners can take to improve enforcement readiness in Türkiye and the EU.



Asım Okat

> "Turkish border measures are effective, but they reward preparation."

Türkiye lies between Asian and Middle Eastern manufacturing centers and European markets. Its border measures are effective, but five points carry most of the risk: only marks registered in Türkiye can be recorded; after a detention notice, the right holder has 10 business days (three for perishable goods) to lodge an injunction and provide proof of the main action; the goods owner's silence is not consent to destruction; prosecution requires a complaint within six months; and a power of attorney (POA) signed abroad needs notarization, legalization, and translation for court use, best done before the clock starts.

1. The framework

Under Decision No. 1/95 of the EC-Turkey Association Council, industrial goods in free circulation move between Türkiye and the EU free of customs duties and quantitative restrictions. However, the Customs Union is not a single market: Article 7 of the Decision preserves restrictions justified to protect industrial and commercial property, and EU customs may detain suspected infringing goods arriving from Türkiye under Regulation (EU) No 608/2013.

Under Article 57 of the Customs Law and Articles 100 to 111 of the Customs Regulation, the Ministry of Trade's customs administration detains goods (*alıkoyma*) or suspends their clearance but does not rule on infringement, and contested goods are destroyed only on a court decision (Customs Law Art. 57/4). The one administrative exception is facilitated destruction with the goods owner's consent (Art. 57/6; Section 4). Seizure (*elkoyma*) is judicial: the IP court orders it as an interim injunction; in criminal proceedings, the criminal judgeship of peace (*sulh ceza hâkimliği*) orders it; in urgent cases, the prosecutor may order it, subject to judicial approval.

2. Customs recordation

Registration first

Customs does not register rights or examine their validity. The applicant (the owner or a

person authorized to use the mark, such as a licensee) must prove its standing and the mark's registration in Türkiye (Regulation Art. 103/3): a national registration with the Turkish Patent and Trademark Office (TÜRKPATENT) or a Madrid designation of Türkiye that has achieved protection. Pending applications and unregistered marks, including marks claimed to be well known, cannot be recorded.

Filing, content, and cost

Applications are filed electronically with a Turkish electronic signature; a right holder established abroad acts only through a representative established in Türkiye (Regulation Art. 103/1). The application must describe the goods technically, give information on the counterfeits, name a contact person, and include an electronic declaration by which the right holder accepts liability and the costs of keeping the goods under customs supervision if the case is not pursued or the goods prove non-infringing (Art. 103/11).

No official fee is charged, and customs decides within 30 business days. A recordation is valid for up to one year and may be extended. The right holder bears testing, expert, and overtime fees, the cost of any facilitated destruction, and storage: detained goods are kept under customs supervision at its risk and expense (Art. 109). Even an accepted recordation gives no claim to compensation if goods slip through (Customs Law Art. 57/2).

3. Border measures in action

Action upon application (Art. 57/1-a)

When import, export, or transit cargo matches a recorded profile, customs suspend its release and, within the first business day, notifies the declarant and the right holder's representative; the notice to the right holder starts the clock. Counsel may inspect the goods and request samples for analysis. On request, customs disclose the names and addresses of the consignee, consignor and declarant; this data may be used only for destruction and court proceedings, and misuse may lead to suspension of the recordation (Regulation Arts. 104/2 and 106).

Goods outside the regime: Article 57 does not apply to travelers' personal effects or to goods made with the right holder's consent, including parallel imports and license overruns (Customs Law Art. 57/5). Genuine goods are subject to exhaustion under the Industrial Property Code (SMK Art. 152), and detaining them risks liability for wrongful interim relief under the Code of Civil Procedure (HMK Art. 399).

> **In 2022, the Court of Cassation, by majority, upheld an Istanbul Regional Court of Appeal judgment holding that goods merely passing through Türkiye do not infringe.**

Transit: The case law is divided. In 2022, the Court of Cassation, by majority, upheld an Istanbul Regional Court of Appeal judgment holding that goods merely passing through Türkiye do not infringe.[1] In 2024, the same Chamber unanimously upheld an infringement judgment against a party claiming its goods were merely in transit.[2] Evidence that the goods are destined for the Turkish market improves the prospects.

Ex officio action (Art. 57/1-b)

Where nothing is recorded, customs officers who find clear evidence of infringement may, at their discretion, detain the goods for up to three business days, during which the right holder must file a complete application. The Council of State has upheld the refusal of any extension where no valid application was on file within that period.[3] Once a valid application is filed, the injunction deadline runs from its filing date (Regulation Art. 107/1).

4. The 10-business-day window

Under Customs Law Art. 57/3 and Regulation Art. 107, from the notice of detention:

- The right holder has 10 business days to lodge with customs a preliminary injunction (*ihtiyati tedbir kararı*) and proof that the main action has been filed in the competent court; if another court granted the injunction, the main action must be filed in the competent court within 10 days of it (Art. 107/1).
- For perishable goods, the period is three business days and cannot be extended (Art. 107/2).
- For other goods, customs may extend the period by up to 10 business days for a justified excuse, on the right holder's request, best made in writing before the period expires.

If the deadline is missed, customs have no discretion: it must proceed with the procedure the declarant requested, such as release into free circulation, transit, or re-export. Article 57/3 recognizes only the civil injunction; a criminal seizure order (Section 6) holds the goods only for as long as the seizure stands.

Facilitated destruction (*Kolaylaştırılmış İmha*)

Within the same period (three business days for perishable goods), the right holder may instead seek destruction without a court ruling (Customs Law Art. 57/6; Regulation Art. 105). It lodges a petition explaining why the goods infringe and a written consent to abandon them for destruction, signed by the owner or by a declarant holding the owner's

certified authorization. If no objection is raised within the period, customs destroy the goods under customs supervision at the right holder's cost and keeps samples.

Unlike the EU regime, there is no deemed consent: silence is not consent, and if the owner or declarant objects, the court route applies within the original deadline, so the injunction petition should be prepared in parallel. Nor does a small-consignment procedure apply. Postal and courier parcels follow the same route.

The judicial stage

The injunction is sought from the specialized IP courts (elsewhere, general civil courts with IP jurisdiction). A foreign owner may sue where the infringement occurred or where its effects are felt, typically before the court of the detaining customs office, or where its trademark attorney registered with TÜRKPATENT has its place of business (SMK Art. 156/3-4).

The petition must show, prima facie, ownership of the registered mark, that the detained goods bear infringing, identical, or indistinguishably similar marks, and that without interim relief enforcement would become substantially more difficult or impossible, or delay would cause serious damage (HMK Art. 389/1; SMK Art. 159). It should expressly request the seizure and safekeeping of the goods in customs (SMK Art. 159/2-b). Enforcement must be requested within one week of the order being pronounced to or served on the applicant, failing which the injunction lapses (HMK Art. 393/1).

5. Formalities for foreign owners

In our experience, the main obstacle for owners based abroad is rarely proving counterfeiting; it's cross-border documentation. A Turkish affiliate holding a written exclusive license can, unless the license provides otherwise, sue and seek an injunction in its own name (SMK Arts. 158/1 and 159/1) under a POA executed before a Turkish notary, avoiding the apostille step.

The power of attorney

Only members of a Turkish bar may represent parties in court. Unlike TÜRKPATENT filings, court proceedings require a notarized POA (*dava vekâletnamesi*), legalized by Apostille or consular chain and filed with a Turkish translation. POAs from states party to the 1961 Hague Apostille Convention, including all EU Member States, the US, and the UK, need a single Apostille; those from non-parties such as the UAE, Qatar, and Egypt, as a rule, require consular legalization unless a bilateral treaty provides otherwise.

> **"POAs from states party to the 1961 Hague Apostille Convention, including all EU Member States, the US, and the UK, need a single Apostille."**

Corporate authority

A US notary verifies only the signatory's identity, not the authority to bind the company; English notaries can certify authority and should be asked to. As Turkish courts examine authority of their own motion, a POA lacking such certification should carry a Secretary's Certificate or Certificate of Incumbency and a Certificate of Good Standing.

Special powers (HMK Art. 74)

Article 74 requires express authority to settle (*sulh*), waive (*feragat*), or accept claims (*kabul*); appoint sub-representatives (*tevkil*); use mediation or other alternative dispute resolution; conclude arbitration agreements; and challenge judges. The POA should also confer express authority to file and withdraw criminal complaints: this falls outside Article 74, but under settled Court of Cassation case law, counsel may withdraw a complaint only with express authority or the client's subsequent approval.

Urgent relief (HMK Art. 77/1)

Where delay may cause harm, the court may, at its discretion, permit counsel to file an injunction petition before the POA is produced, within a peremptory deadline (*kesin süre*). If, by then, neither the POA is filed nor the client ratifies counsel's acts by petition, the application is deemed never to have been made, and counsel may be ordered to bear the costs and the opponent's losses. Article 77/1 bridges the customs deadline only if the POA is certain to arrive in time.

Security

1. **Foreign plaintiff security (*cautio judicatum solvi*):** Under Article 48 of the Code on Private International Law and International Civil Procedure ("MÖHUK"), foreign natural and legal persons who sue or initiate enforcement must provide security for costs and the opponent's damages, but the court must exempt them where reciprocity exists under a treaty (notably the 1954 Hague Convention on Civil Procedure), statute, or de facto practice. The US and the UK are not parties to that Convention, so their companies rely on bilateral treaties or de facto reciprocity, and first-instance practice varies. Security ordered but not posted leads to dismissal.
2. **Injunction security:** The applicant must, as a rule, provide security for the loss an unjustified injunction may

cause the respondent and third parties, although the court may waive it where the request rests on official documents or conclusive evidence (HMK Art. 392). No statutory percentage applies: the court sets the amount, usually as a lump sum. The security does not cap exposure: if the injunction proves unjustified or lapses, the applicant must compensate for resulting losses, such as demurrage and storage, regardless of fault (HMK Art. 399).

6. Criminal enforcement

Under SMK Art. 30/1, producing, selling, importing, or exporting goods that infringe a trademark by identical or confusingly similar imitation, or possessing, transporting, or storing them for commercial purposes, carries one to three years' imprisonment and a judicial fine of up to 20,000 day-units. The mark must be registered in Türkiye (SMK Art. 30/5).

Prosecution is complaint-based (SMK Art. 30/6). The complaint must be filed within six months of learning of the act and the offender (Turkish Criminal Code Art. 73), a period that may start with the customs notice, and is valid only if counsel's POA authorizes it on the day of filing. The file must go to reconciliation (*uzlaştırma*) before indictment. A seller who discloses its source, leading to the seizure of the manufacturer's goods, is not punished (SMK Art. 30/7).

On the prosecutor's application, the criminal judgeship of peace issues a seizure order (*elkoyma kararı*); only the trial court orders confiscation (*müsadere*).

Rapid destruction (SMK Art. 163)

Article 163, distinct from facilitated destruction at customs, applies only to goods seized in criminal proceedings. If the court cannot keep them in its evidence office because of their quantity, size, or nature, the prosecutor takes samples, and the rest is handed over to the local finance office. If the goods risk damage or substantial loss of value, or if their safekeeping is a serious burden, the judge (at the prosecutor's request) or the trial court orders their destruction after an expert examination before a commission chaired by the prosecutor.

7. Recommendations

1. **Audit registrations:** register core marks, logos, and sub-brands with TÜRKPATENT in all relevant classes.
2. **Keep the customs application current:** request its extension well before expiry and keep partner lists and genuine-versus-counterfeit identification guides up to date; the right holder is responsible for errors caused by outdated data (Regulation Art. 103/12).
3. **Prepare documents in advance:** keep notarized, legalized, and translated POAs with the special powers and criminal-complaint authority, plus corporate authority certificates, on file with Turkish counsel.
4. **Mirror the recordation in the EU:** a Turkish recordation has no effect at EU borders, so EU trademark owners should also file a Union application for action under Regulation (EU) No 608/2013 covering the Member States where Turkish consignments typically enter.

> **Keep notarized, legalized, and translated POAs with the special powers and criminal-complaint authority, plus corporate authority certificates, on file with Turkish counsel.**

Conclusion

Turkish border measures are effective, but they reward preparation: registration in Türkiye, a current recordation, and a legalized POA should all be in place before a detention notice starts the 10-business-day clock.

Footnotes

1. *Court of Cassation, 11th Civil Chamber, 13 June 2022, 2021/1014 E., 2022/4799 K. (by majority).*
2. *Court of Cassation, 11th Civil Chamber, 18 December 2024, 2023/6402 E., 2024/9191 K. (unanimous).*
3. *Council of State, 10th Chamber, 16 September 2024, 2020/790 E., 2024/2966 K.*

RÉSUMÉ

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