



LAO PEOPLE'S DEMOCRATIC REPUBLIC
Peace Independence Democracy Unity Prosperity

Ministry of Finance

No. 1970/MOF
Vientiane Capital, dated 8 September 2011

**INSTRUCTION
ON
CUSTOMS MEASURES FOR THE PROTECTION OF INTELLECTUAL
PROPERTY RIGHTS**

- Pursuant to Customs Law No. 05/NA dated 20 May 2005;
- Pursuant to Intellectual Property Law No. 08/NA dated 24 December 2007;
- Pursuant to Decree on the Organization and Activities of the Ministry of Finance No. 80/PM dated 28 February 2007; and
- Pursuant to the request from the Customs Department No. 2456/CD dated 26 August 2011.

To ensure the implementation of, and to provide guidance on the application of the customs measures for the protection of intellectual property rights in a uniform manner nationwide,

The Minister of the Ministry of Finance hereby issues instructions as follows:

**Section I
General Provisions**

Article 1. Purpose

This Instruction is issued to set out rules and procedures for the customs measures for the protection of intellectual property rights of right holders.

Article 2. Definitions

Terms used in this Instruction shall have the following meanings:

1. **Customs officer** shall mean customs staff as appointed to perform duties at any border customs checkpoint, customs station, mobile customs unit and to perform any ad-hoc mission of customs.
2. **Right holder** shall mean any (registered or non-registered) person, individual or entity, domestic or foreign, whose intellectual property rights are protected by the Intellectual Property Law.
3. **Owner of the goods** shall mean any person, individual or entity, domestic or foreign, who is liable for the goods by virtue of ownership or representation.
4. **Applicant** shall mean the right holder who applies for inspection and suspension of goods suspected of infringement.
5. **Suspension** shall mean the temporary keeping of goods in waiting for the result of court proceedings.

6. **Counterfeit trademark goods** shall mean any goods (including packaging) bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the Intellectual Property Law.
7. **Pirated copyright goods** shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the Intellectual Property Law.

Article 3. Protection of Intellectual Property Rights

The protection of intellectual property rights shall be the application of measures against infringers upon application of any right holder in accordance with the procedures as set out in this Instruction. The protection under this Instruction shall not apply to the non-repetitive import or export of small quantities of goods of a non-commercial nature.

This Instruction shall apply to counterfeit trademark goods and pirated copyright goods only.

Section II Inspection and Suspension Procedures

Article 4. Right to Apply for Inspection and Suspension

The right holder, who has valid grounds for suspecting that the importation, exportation or transit of certain goods may violate his intellectual property rights, may file, by himself or by his authorized representative, an application in writing to the customs authority for inspection and suspension of such goods.

In case of emergency where the filing of a written application is impossible, the right holder may verbally request the customs authority to take action as provided for under the Customs Law.

Article 5. Application Requirements

Prior to the inspection and suspension, the right holder is required to provide the following documents:

1. Application for inspection and suspension using the form as issued by the Customs Department;
2. Evidence of relevant intellectual property rights and adequate evidence of prima facie infringement of such rights in compliance with the Intellectual Property Law;
3. Names of the relevant checkpoint(s) or place(s) where goods will be imported or exported;
4. Sufficiently detailed description of the goods to make them readily recognizable by the customs officer;
5. any other information (if any) such as photos of infringing goods, details of importer or exporter as information for customs officers;
6. deposit of a security of 10,000,000 Kip. The security shall be deposited in cash, by check or by a bank guarantee;
7. execution of a guarantee for covering any expenses of customs authorities which may arise from the requested suspension; and

8. Payment of application fee in accordance with applicable regulations.

Article 6. Place for Filing Application

The right holder shall file his duly and complete application and supporting documents as required in Article 5 of this Instruction with the Customs Department or relevant regional customs office.

Article 7. Rejection

After receiving the application, the customs authority shall examine the compliance of the application within 3 (three) working days of the filing and serve the applicant a written notice with reasons in case of rejection.

Article 8. Acceptance of Application and Inspection of Suspected Goods

The customs authority shall, within 3 (three) working days from the receipt of the application filed under Article 6 herein, issue an instruction accompanied with the application and supporting documents to the relevant customs officer(s) in order to inspect suspected goods. Immediately upon receipt of the instruction and application with supporting documents, the customs officer shall start to inspect the suspected goods.

Article 9. Suspension

If the customs officer has found the suspected goods, it shall immediately order the suspension of such goods and, within 24 hours, serve a written notice of such suspension to both the relevant importer or exporter and the applicant and send a copy of the notice to the Customs Department or relevant regional customs office.

Article 10. Additional Securities

Where there are suspensions at several points or places under the same application, the customs authority shall require the applicant to deposit, within 2 working days of the applicant receiving notice of such a requirement, the additional security set out under Article 5.6 herein per the number of points of such suspensions. If the applicant has failed to deposit such additional security within the period above-mentioned, the relevant customs officer shall take action as provided for under the Customs Law.

Article 11. Judicial Action

Upon receipt of the notice of suspension, the applicant shall initiate judicial action with the competent People's Court against the owner of the goods within 10 working days.

Article 12. Duration of Suspension

The customs officer may maintain the suspension for 10 (ten) working days. The customs officer may continue the suspension provided that the applicant has provided evidence that a judicial action has been initiated.

During the suspension as provided for in the first paragraph of this article, owner of the goods, importer or exporter or consignee may request to move the suspended goods to his/her warehouse or any other adequate place upon consideration of the customs officer in consultation with the applicant, subject to a deposit of security of one hundred twenty percent of all taxes and duties imposed on such goods. The removal and new placement of such goods shall still be under the control of the

customs officer in order to prevent the release into free circulation of such goods.

Article 13. Right of Inspection of Suspended Goods

During the suspension, importer or exporter, applicant or right holder may request to have the goods inspected in order to substantiate their claims.

**Section III
Enforcement of Court Decisions**

Article 14. In Case of an Action Initiated

Where a People's Court decision has ruled that the suspended goods are infringing goods, the owner of the goods shall be fined in accordance with the Customs Law. In addition, the owner of the goods shall pay for any expenses in accordance with the People's Court decision. Where there has been a deposit of security under second paragraph of Article 12 herein, the customs officer shall apply such a security for such payment. The remaining of the security after such payment shall be returned to the owner of the goods.

Where the People's Court decision has ruled that the suspended goods are not infringing goods, the customs officer shall apply the security of the applicant to pay for any expenses and damages arising from such suspension in accordance with People's Court decision. The remaining of the security after such payment shall be returned to the applicant.

Article 15. In Case of No Action Initiated

Upon suspension, within 10 (ten) working days, the applicant shall initiate judicial action with competent People's Court. The failure of such initiation within such a timeframe shall entitle the customs officer to release the goods immediately and to apply the security of the applicant to compensate for damages suffered by the owner of the goods.

Where there has been a deposit of security under second paragraph of Article 12 herein and where the import of such goods is subject taxes and import duties, the customs officer shall deduct such taxes and duties from such a security as part of national income collection. The remaining of the security after such payment shall be returned to the owner of the goods.

Article 16. Claim for Compensation

If the compensation does not cover all damages, the applicant or the owner of the goods may file a claim for additional compensation with the competent People's Court.

Article 17. Withdrawal of Judicial Action

Where the parties have reached an agreement, the plaintiff may withdraw his or her judicial action before the relevant People's Court decision becomes final.

**Section IV
Final Provisions**

Article 18. Measure against Infringing Goods

The infringing goods shall be destroyed in accordance with a court decision. Expenses for such destruction shall be in accordance with the relevant People's Court decision.

Article 19. Right to Appeal

Any individual or entity has the right to appeal to protect their rights and interests in accordance with relevant laws of Lao PDR.

Article 20. Implementation

The Customs Department in coordination with businesses and relevant authorities, shall implement this Instruction in a strict manner.

Article 21. Effectiveness

This Instruction shall be effective from its date of signature.

Minister of the Ministry of Finance

[Signed and sealed]

Phouphet Khamphouvong