

Unofficial translation

LAO PEOPLE'S DEMOCRATIC REPUBLIC
PEACE INDEPENDENCE DEMOCRACY UNITY AND PROSPERITY

Ministry of Finance

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Vientiane Capital
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Guideline On Customs Officers' Measures to Protect Rights of Intellectual Property

- Pursuant to the Customs Law No. 81/NA dated 29 June 2020;
- Pursuant to the Intellectual property Law No. 38/NA dated 15 November 2017;
- Pursuant to the Prime Minister Decree No. 600/PM dated 14 October 2021
- Pursuant to the Agreement on Trade-Related Aspects of Intellectual Property Rights (Known as TRIPS Agreement).
- Pursuant to the proposal made by the Customs Department No. 07544/CD date 20 December 2022.

The Minister of Finance issues the following the Guideline:

Chapter I General Provisions

Article 1 Objective

This guideline defines the regulations and procedures on applying for notifying the information as owner of intellectual property. As well as the temporary suspension of goods and inspection of goods which are violation of intellectual property, implementing by the ex-officio, the follow up after the court decision to ensure that the implementation of measures to protect rights of the intellectual property by the customs officers in a uniformed manner throughout the country.

Article 2 Protecting rights of intellectual property

This guideline shall be applied for the measures against infringers upon the application of any right holder in accordance with the procedures as set out in this guideline. This only applies to the counterfeit trademark, pirated and industrial design infringing products in accordance with the rules and regulations.

The protecting rights of intellectual property under this guideline does not apply to the import and export of non-commercial goods and not in repetitive action.

Article 3 Definitions

The terms used in this guideline have the meaning as follows:

1. **Customs officer** refers to the 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. **Intellectual property rights** refer to the right of individuals, legal entities, or organizations in relation to intellectual property.
3. **Right holder** refers to any (registered or non-registered) person, individual, or entity, domestic or foreign, whose intellectual property rights are protected by the Intellectual Property Law.
4. **Owner of the goods** refers to any person, individual or entity, domestic or foreign, who is liable for the goods by virtue of ownership or representation.
5. **Applicant** refers to the right holder who applies for inspection and suspension of goods suspected of infringement.
6. **Application** refers to the documents submitted to the Customs Office for notification of ownership information on intellectual property rights and requests for temporary detention of intellectual property rights in the printed form prescribed by the Customs Administration;
7. **Goods suspected of infringing intellectual property right** refers to goods with regard to which there are reasonable indications that they are the subject of an act infringing an intellectual property right.
8. **Suspension** refer to the temporary detention of goods in waiting for the result of court proceedings.
9. **Counterfeit goods** refers to 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, under the Intellectual Property Law.
10. **Pirated goods** refers to 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.
11. **Industrial Design infringing goods** refers to any goods bearing or embodying a design which is a copy, or substantially a copy, of the protected design without authorization of the industrial design right under the Intellectual Property Law.

Chapter II

Procedures of Applying for Notifying the information as the owner of Intellectual Property Rights

Article 4 The person who has the right to file an application

A Holder of intellectual property rights or authorized person may submit an application to Customs Department, in accordance with the procedures and under the conditions set out in this chapter, for the suspension of clearance of any goods imported, exported, or transited on the grounds that the trademark, copyright or industrial design is being or is likely to be infringed.

Article 5 Requirements for Application

The application shall be made out on a form along with supporting documents as followings:

1. A written form of inspection and supervision of goods that are subjects of intellectual property rights in the form prescribed by the Customs Administration;
2. A copy of the certificate of protection of industrial property rights (if any).
3. Any evidence that proves the applicant is the right holder or the authorized representative of the right holder.
4. A detailed description of goods infringing intellectual property rights, photos, and product identification guide to distinguish genuine goods from goods infringing intellectual property rights;
5. A list of legal exporters and importers' goods required supervision; a list of people who may export and import goods infringing intellectual property rights (if any);
6. Other information is needed to enable the goods in question to be readily recognized by the customs authorities (if any).

Article 6 Application Process

A person as prescribed in Article 4 of this Instruction, can submit the application to the Customs Department or the provincial, Vientiane Capital Customs according to the official form prescribed by the Customs Administration and the following steps must be followed:

1. The request for a declaration of ownership information must include the case file as specified in clauses 1 to 4, Article 5 of this Instruction;
2. The Customs Department shall accept the request for notification of ownership information in case of compliance with the conditions of clause 1 above;
3. In the case of applying for the declaration of ownership information through the provincial, Vientiane capital Customs shall receive the application and issue a receipt stating the date of receipt of the application in case the application meets the conditions as specified in item 1 of this article and forward it to the Customs Department for further action.

Article 7 Acceptance or Rejection

The customs authorities shall within ten working days from the date of receipt of all the application documents as prescribed in article 5, inform in writing to the applicant whether his/her application is approved. Where the Customs authority does not approve his application, it shall explain the reason.

Article 8 The Record of Right Owner

After the Customs Administration has notified the applicant in writing that the application has been approved, a copy of the application for a declaration of ownership of intellectual property rights and supporting documents shall be forwarded to the provincial and capital customs for use in risk management and use as a reference when inspecting goods.

Article 9 Validity Period

The application for customs protection for an intellectual property right shall come into effect from the date of approval by the Department of Customs. The period of validity of the application is 2 years and can be extended based on the request by the applicant.

Article 10 Modification or Addition of the Application

Applicants can amend or add information in the application form to declare their ownership rights throughout the protection of intellectual property rights by filing an application with the Customs Department.

Article 11 Termination of application

The Department of Customs shall terminate the application in the following cases:

1. The applicant has a written request for permission to terminate the inspection and supervision of the customs authorities for goods required for protection;
2. The applicant does not have a written request for permission for extension upon the expiry of the validity of the application for inspection and supervision;
3. The protection of intellectual property rights is not more valid.

Chapter III Inspection of Goods Infringing Intellectual Property Rights

Article 12 Customs inspection

When conducting physical inspecting of goods during clearance, customs officers shall inspect and compare the information on customs declaration on the written customs declaration about goods'

names, brands, origin, value, packing, goods quality, transportation route of goods and information in the application for intellectual property rights protection database.

Article 13 Handling of goods suspected of infringing an intellectual property right

In the event that the goods are detected have sufficient grounds for suspecting that goods are infringing, a Customs officer may detain a shipment for a predetermined period of three (3) working days to conduct further investigation and inquiry to the owner of the goods to prove that the goods are not infringing on intellectual property and contact the right holder, following a notification from the Customs, to come and verify the shipment.

Product Identification of counterfeit goods shall be carried out as follows:

- 1) Request the Right Holders to provide documents related to goods (such as catalogs, assessment conclusions, documents from abroad, and results of handling of similar cases).
- 2) Coordinate with the Right Holder to come and verify whether the goods are counterfeited or not, if the Right Holder confirms that the goods are counterfeited and the owner of the goods agrees, the goods will be confiscated and destroyed. If the owner of the goods does not agree with this conclusion, the complaints shall be made in accordance with the law and regulations.
- 3) If concluding that the goods are not counterfeit, the customs authority shall continue the procedures for customs clearance of the goods.
- 4) If the duration of 3 days since the date of notifying the right holder ends, the customs authority shall continue the procedures for customs clearance of the goods.

Chapter IV Ex-Officio

Article 14 The Rights of Customs Officials

Customs may can initiative suspend the declaration of importing-exporting goods in respect of which they have acquired prima facie evidence or there are reasonable grounds to suspect that an intellectual property right is being infringed in accordance with article 160 of the Intellectual Property Law. After the goods have been confiscated. Upon the suspension, the provisions of article 12 of this Instruction shall apply.

Article 15 Follow-up Procedures after the Implementation of Customs

After customs officers suspend the goods according to article 13 of this Instruction, the importer and the right holder shall be promptly notified of the suspension and Customs shall ask the right holder to come and verify the goods within 3 working days.

In the event that the right holder does not show up or the goods turn out to be genuine, the customs officers shall continue the customs clearance for the goods and shall be exempt from liability to appropriate remedial measures where actions are taken or intended in good faith.

Chapter V Control on Goods Infringing Intellectual Property Rights

Article 16 Request for Temporary Suspension

The right holder or the authorized representative may file a request to temporarily suspend clearance of the shipment after receiving notification from the customs officer informing on the detection of goods suspected of infringing the intellectual property rights or in the event of the right holder or the authorized representative has known of a shipment during import-export or transit containing counterfeit, pirated goods or industrial design infringing

goods, by submitting a request form set out by Customs Administration with a deposit of ten million (10,000,000) kip.

In case of an emergency, where the filing of a written application is impossible, the rights-holder may verbally request the Customs authority to take action but must submit a written request within three working days.

Article 17 Proceedings after the Temporary Detaining Goods

When intercepting the targeted goods as in the request form, the customs officers have the right to suspend the target goods for ten (10) working days, the applicant has 10 working days to settle the dispute with the owner of the goods, however, the suspension may continue if the applicant has provided evidence that case has been taking to dispute settlement process or judicial action has been initiated.

Article 18 Additional Depositing

In case of detaining the goods at many checkpoints as in the same request letter, the customs must notify the appellant to provide an additional deposit with the amount of detaining goods as determined in article 10 of this Instruction within 2 working days after the day when the customs notify. If the applicant fails to deposit within the period determine, the customs will process as determined in the Law on customs.

Article 19 Goods suspected of Infringing as Industrial

By receiving a request set forth in this Article, in the case of goods suspected of infringing industrial design rights, the owner or consignee of the goods may be able to obtain the release of the goods, in the event that the customs officer suspects that the release of goods related to the industrial design enters the commercial cycle and the time limit set forth in Article 17 has ended without a temporary waiver by the relevant authorities, by producing a deposit that is sufficient to cover the damage that will not affect the settlement of the right holder, which means that the deposit must be returned in case the rightsholder does not continue to exercise his right within a reasonable period of time.

Article 20 Storage of Goods

For storage reasons, the owner of the goods, importer, exporter, or customer has the right to move the product into their stock or any suitable place as the regard of customs officers and the appellant must deposit in the amount of customs duty, tax and other fees in accordance to Customs Law and the shipment will be managed by the customs officers to ensure the shipment will not be sold to the market.

Chapter VI

Court Judicial Action

Article 21 Appeal to the Court

In the event that the case is taken to the court and the court decides the product detained by the customs officer is the trademark infringing or pirated product violating the copyright, the owner must be fined as per the law on customs. Besides that, the owner of the goods must pay for other compensations as per the court order, if there is the deposit of the owner of the goods as

in article 16 part 2 of this Instruction, the customs officer may use the deposit to pay for compensation and other damages, but the remaining amount of money, the customs officer must return to the owner of the goods.

In the event that the court decides that the goods detained by the customs officer do not infringe trademark or copyright, the customs officer can bring the deposit to pay for compensation and other damages as the result of detaining the product as the court judge, and the remaining amount of money must be returned to the applicant.

Article 22 In Case of Not taking Dispute Settlement Action or not Appealing to the Court

Upon detaining the goods, within 10 official days, the applicant must solve the dispute or initiate judicial action with the Court against the owner of the allegedly infringing goods. Failure to solve the dispute or initiate judicial action within the statutory time entitles the customs officer to release the goods immediately and to compel the applicant to compensate for damages suffered by the owner of the goods.

When there is a deposit from the owner of the goods under Article 20 of this Instruction, and if it is the import of goods subject to customs duty and other taxes, the customs officer can take the amount to cover the customs duty and other taxes to transfer to the national treasury. The remaining amount must be returned to the product owner.

Article 23 Cancellation of the request

In case, there is mutual consent, the applicant has the right to cancel the Judicial request before the final judgment of the people's court.

Chapter VII

Final Provisions

Article 24 Action to the infringing goods

The Intellectual Property Right infringing goods must be subject to destruction on the basis of the agreement of both parties. The cost of destruction is the responsibility of the owner of the goods.

Article 25 Implementation

- The Customs Department shall disseminate this Instruction to the Provincial, Vientiane capital customs, customs border checkpoints, and relevant operators in implementing the measures to protect intellectual property right effectively and efficiently.

- The Customs Department shall issue a detailed instruction manual on the procedure for implementing this instruction in detail.

- Customs Administration at each level to organize the dissemination event of this guideline to the relevant authorities in order to strictly implement this guideline.

Article 26 Effectiveness

This Instruction will enter into force from the date of the signatory and this Instruction replaces the Instruction of the Minister of Finance on Measures of Customs officers on Intellectual

Property Right Protection Number: 1970/MoF, dated 08 Sep 2011 and fifteen days after the publication in the Official Gazette.

Minister of Finance
Bounchom Ubonpaseuth