

ラオス関税局仮訳

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Lao People's Democratic Republic
Peace Independence Democracy Unity and Prosperity
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Ministry of Finance

Ref: **1970**/MoF

Vientiane Capital, date 08 Sep 2011

Instruction

On Measures of Customs officers on Intellectual Property Right Protection

- Pursuant on the Customs Law, no. 05/NA, issued date on 20th May 2005.
- Pursuant on the Intellectual Property Law, no. 08/NA, issued date on 24th Dec 2007.
- Pursuant on organizing and processing in activities of the Ministry of Finance, no. 80/PM, issued date on 28/02/2007.
- Pursuant on the proposal of Customs Department, no. 2456/CD, issued date on 26/08/2011.

To ensure in the organization and guidance of implementing the measure of Customs officers on intellectual property right protection in the whole country.

Minister of Finance issued the instruction as:

Chapter I

General Provision

Article 1. Objectives

This instruction is established to define the regulation and the process of implementation on the measure of Customs officers on intellectual property right protection.

Article 2. Definitions

The terms used in this Guidance shall be construed as follows:

1. Customs officers are customs staffs who have been appointed to have task at the border checkpoint, customs post, mobile customs unit and other tasks related to Customs field.
2. Right owners or right holders mean a person or entity within internally or from foreign countries (registered or not registered) who receives intellectual property right (IPR) protection according to the law on IPR.
3. Goods owners means the internal or external persons or entity whom is taking responsibility on product as the ownership right or being appointed by the holders of the ownership right.
4. The applicant means the right owner who submits the request letter to the customs officers to inspect and detain the products.
5. Detaining mean keeping the products, things temporarily while waiting for the result of court's judgment.
6. Counterfeit goods which violate the Trade Mark mean the products (with packaging) attached the TM which were not permitted, similar or be not able to identify difference with TM registered legally, and will be regarded as the violation of IPR according to the Law on IPR.
7. Products that violate copy right means any which is copied without permission from the right owners and any good which is produced directly or indirectly with copyright violation or related right as in the Law on IPR.

Article 3. IPR protection

IPR protection is the usage of measure to the IPR violator based in the requirement of the right owners with the regulation implementation and process determined in this instruction. The IPR protection under this instruction does not apply to de minimus import and export which does not have the characteristics of trade purpose.

This guidance only covers the detaining of trademark infringing and pirated products which violate the copyright.

Chapter II

The process of inspecting and detaining the goods

Article 4. Right of request on checking and detaining

If the right owner knows of a shipment during import export or transit containing counterfeit or pirated goods, , the right owner or appointed persons may inform Customs and file a motion by submitting an application form provided by Customs to inspect and detain those products.

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.

Article 5. Conditions of requirement

The Right holder must provide the following documents prior to inspection and suspension:

1. The request letter for inspection and suspension using the standard form issued by the Customs Department.
2. The references of IPR and reference of violation which relates to the law on IPR.
3. Defining the name of any border or place which may have import or export the goods.
4. Detail of product provided in order to help Customs officers recognize easily.
5. Others (if have) such as: pictures of products which violate and detail of importer-exporter to be reference to Customs officers.
6. A security deposit of LAK 10,000,000 (approximately EUR 1,000) deposited in cash, by check or by bank guarantee.
7. Sign an execution of a guarantee to cover any expenses of Customs authorities, which may arise from the requested suspension;
8. Fee of request letter must follow the updated regulation in each period.

Article 6. Place for submitting the request letter

The right owners can submit the request letter and documents as defined in article 5 of the instruction properly and completely to customs department or Regional customs.

Article 7. Rejection to the request letter

After the customs received the request letter, they must check the document whether it is compliance with the regulation or not, within 3 working days, then customs will inform

the applicant the result in the case of rejection a written reason of rejection is also provided.

Article 8. Response on the request letter and inspection of the targeted goods

Within 3 official days after receiving the request letter as in article 6 of the instruction, Customs must issue the letter of notification to import-export customs checkpoints with supporting document.

Article 9. Detaining the goods

When intercepting the targeted goods as in the request letter, the customs officers must immediately detain the goods and inform about the detaining within 24 hours to related importer or exporter and appellant in writing as well as copy the report and submit to the customs department or Regional customs to acknowledge.

Article 10. Additional Depositing

In case of detaining the goods in at many checkpoints as in the same request letter, the customs must notify to the appellant to provide additional deposit with the amount of detaining goods as determined in article 5 no. 6 of the instruction within 2 official days after the day when the customs notify. If the appellant doesn't deposit within the period determine, the customs will process as determined in the Law on customs.

Article 11. Appealing

The applicant must initiate judicial action with the Court against the owner of the allegedly infringing goods within ten (10) working days upon receipt of the notice of suspension.

Article 12. Period of detaining

The customs officers have right to suspend the target goods for ten (10) working days, However, suspension may continue if the applicant has provided evidence that judicial action has been initiated.

For storage reason, the owner of product, importer, exporter or customer has right to move the product into their stock or any suitable place as the regarding of customs officers and the appellant must deposit in the amount of customs fee 120% and other fees must be paid and the product will be managed by the customs officers to ensure the product will not be sold out.

Article 13. Right in inspecting products detained

During the period of detaining, the owner of product, importer, exporter or applicant has right to check the detained product to find out more detail and reference to take in the judgment.

Chapter III

Implementation with the judgment

Article 14. Appeal to the court

When there is the judgment that the product detained by the customs officer is the trademark infringing or pirated product violating the copyright, the owner must be fined as the law on customs. Besides that, the right owner must pay for other compensations as the court order, if there is the deposit of the owner as in article 12 part 2 of the instruction, the customs officer can spend the deposit to pay for compensation and other damages, but the left money of compensation, the customs officer must return to the owner.

When there is the judgment that the product detained by the customs officer is not infringe or the product violating the right, 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 left money of compensation must be returned to the applicant.

Article 15. Without the appeal to the court

If there is the detaining of product, within 10 official days, The applicant must initiate judicial action with the Court against the owner of the allegedly infringing goods . Failure to 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 the deposit as in article 12 section 2 of the instruction, and if it is the import of goods subject for customs duty and others taxes, the customs officer can cut off the customs fee duty and others taxes then put in the national budget. The left budget must be returned to the product owner.

Article 16. Request for compensation

When the compensation is not enough to cover the damages, the applicant or product owner has the right to request the court for getting the additional compensation.

Article 17. Cancellation of the request

In case, there is a mutual consent, the applicant has the right to cancel the Judicial request before the court judgment issued effectively.

Chapter IV

Final provision

Article 18. Action to the infringing goods

The trademark infringing or pirated product violating the copyright must be destroyed as the court's judge, for cost of destruction; it will follow the court's judge.

Article 19. Right to appeal

A person has right to submit the request for protecting right and benefit according to the relevant law of Lao PDR.

Article 20. Implementation

The customs officer is assigned to coordinate with the enterprise owner and other relate organization to implement the guidance strictly.

Article 21. Effect

This guidance will be effect-from the date of signatory.

Minister of Finance

Phouphet Khamphounvong