

Supreme Decree 003-2009-EF

Regulation of Legislative Decree N° 1092 which approves Border Measures for the Protection of Copyrights or Related Rights and Trademarks

TITLE I GENERALITIES

Article 1.- Objective

This regulation has the objective of regulating the border measures for the Protection of Copyrights, Related Rights, and Trademarks, established through Legislative Decree 1092.

Article 2.- Definitions

For the effects of this regulation, the following terms are defined as:

- a) INDECOPI: Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual
- b) Law: Legislative Decree 1092.
- c) Suspension of Release: The action of the Customs Authority through which it is established that goods referred in the Law, destined to importation regimes for the consumption, re-importation in the same state, temporary entry for re-exportation in the same state, definitive exportation, temporary entry for re-importation in the same state or customs transit, to which release has not been granted, remain in primary zone or in zone authorized by customs authority.

Article 3.- Scope of Application

This regulation is applicable to goods referred in the Law that have been destined to importation regimes for consumption, re-importation in the same state, temporary entry for re-exportation in the same state, definitive exportation, temporary exportation for re-importation in the same state or customs transit.

Article 4.- Small Consignments

- 4.1. For the effects of article 3.2 of the Law, it should be understood that small consignments are goods which because of their value do not have commercial purposes and if they had, it is not significant for the country's economy.
- 4.2. For the application of this regulation, it is not significant to the country's economy, goods which have a FOB value of no more than US \$ 200.00 (Two hundred with 00/100 American Dollars).

TITLE II REGISTER

Article 5.- Registration in the Customs Authority

- 5.1. In order to verify the Right Holder and for the effects of applying the suspension of release, the Right Holder or its legal representatives or appointees shall register in the registry established for such purpose by the Customs Authorities.
- 5.2. The Customs Authority will request INDECOPI a previous opinion in order to register the right holder.
- 5.3. The register must be renewed annually by the right holder during the first thirty (30) days of each calendar year. The absence of renewal will determine the expiration of the register.

5.4. It is the responsibility of the right holder to provide corresponding information of the copyrights, related rights or trademarks that it pretends to protect and that it reasonably possesses. The updating of this information on the part of the right holder will be made according to what is established by the Customs Authority.

5.5. The Customs Authority can request the right holder of the registered right any additional information that might be useful in order to carry out the suspension of the release according to what is established in the Law and in this Regulation.

Article 6.- INDECOPI Registries

INDECOPI will allow the Customs Authority access to their established registries related to trademarks, copyrights and related rights.

TITLE III PROCEDURE ON REQUEST OF A PART

Article 7.- Opportunity to File the Request

The right holder or its legal representative or appointee shall file before the Customs Authority a request for the suspension release, according to the respective customs regime, taking into consideration the following.

- a) The importation for consumption: once the declaration is numbered until before the release is granted.
- b) The re-importation in the same state: once the declaration is numbered, until before the release is granted.
- c) The temporary entry for re-exportation in the same state: once the declaration is numbered until before the release is granted.
- d) The definitive exportation: once the provisional declaration is numbered until before the shipment is authorized.
- e) Temporary exportation for re-importation in the same state: once the provisional declaration is numbered until before the shipment is authorized.
- f) External Customs transit: once the declaration of origin is numbered at customs until before the goods are authorized to leave the country.
- g) Internal Customs Transit: Once the declaration of origin is numbered at customs until before the conclusion of the regime.

Article 8.- Guarantees

8.1. Customs Authority shall verify the establishment of a bond or equivalent guarantee granted by a financial entity or a sworn agreement in favor of the owner, consignee, or consignor.

8.2. The bond or equivalent guarantee must be issued in a notarized document, or, if it be the case, through a financial entity duly established in the country, and must be jointly liable, irrevocable, unconditional, indivisible, of immediate procedure, and without legal seizure benefit.

8.3. The bond, equivalent guarantee, or sworn agreement must be in force for minimum thirty (30) calendar days and must be in force while the suspension release, administrative or judicial process lasts, as corresponds in accordance with the applicable legislation.

8.4. The bond, equivalent guarantee or sworn statement must be established for an amount equivalent to twenty percent (20%) of the FOB value of the merchandise on which the suspension is being requested. In case of perishable merchandise, the bond, equivalent guarantee or sworn statement shall be established for one hundred percent (100%) of the FOB value of the merchandise.

8.5. In case the competent authority determines that the suspended merchandise is not pirate, counterfeit or confusingly similar, or the applicant has not complied with accrediting the filing of a

corresponding motion for infraction or demand, the customs authority shall submit the document which holds the bond, equivalent guarantee to its beneficiary in order for it to be executed.

Article 9.- Presentation or Transmission of the Bond, Equivalent Guarantee or Sworn Agreement

SUNAT will issue the provisions for the presentation or transmission of the bond, equivalent guarantee or sworn agreement, as well as for its notification and/or delivery to the owner, consignee, consignor or the one who declares it, as corresponds.

Article 10.- Sworn Agreement

- 10.1 The applicant shall submit the sworn agreement to the Customs Authority, who will hand it to the importer, consignee or consignor through its Customs Agent. In case of the customs transit regime the Customs Authority will hand the sworn agreement to the one who made the declaration.
- 10.2 The sworn agreements will only be accepted from public sector entities as well as from the Foreign Entities and Institutions of International Cooperation – ENIEX, Non-Governmental Organization of National Development – ONGD-PERU, and Private Institutions with non profit aims, receptive of assistance or educational donations – IPREDAS registered in the corresponding Registry which has the Peruvian Agency of International Cooperation- APCI in charge of it.

Article 11.- Bond payment

For the effects of what is established in article 7.2 of the Law, the determination that goods subject to suspension do not constitute an infraction to the Copyrights or Related Rights or Trademarks, will be understood as complied with by a resolution or decision issued by the Competent Authority that is firm or that has caused statement or its execution, as the case may be.

Article 12.- Inspection

The Competent Authority will carry out the inspection of the merchandise subject to the suspension, before the representative of the customs storage department.

Article 13.- Precautionary Measures issued by the Competent Authority

For the effects of what is established in articles 8.4 and 10.4 of the Law, it will be understood that a precautionary measure is destined to the retention of the merchandise, when it is ordered, alternatively, its immobilization or confiscation.

Article 14.- Raising of the Measure

The Customs Administration will proceed to cancel the suspension of release when:

- a) The applicant has not informed of the filing of the action for infraction or of the corresponding demand, after the period established in article 8.3 of the Law has expired.
- b) INDECOPI or the Judicial Branch have not informed SUNAT that a precautionary measure has been issued in order to retain the merchandise, after the period indicated in article 8.3 and the extension established in article 8.4 of the Law have expired.

Article 15.- Availability of Merchandise

The Customs Authority will make the merchandise available to the Competent Authority, in case it issues the corresponding precautionary measure for the retention of the merchandise.

TITLE IV EX OFFICIO PROCEDURE

Article 16.- Ex officio suspension of release

In the ex officio procedure, the suspension of release shall be notified to the right holder, its legal representative or appointee, duly accredited according to the information contained in the Registry referred in article 5 of this Regulation.

Article 17.- Accreditation of the filing of a motion for infraction or demand

Upon reception of the notification the right holder, legal representative or appointee shall have a period of three (03) working days to submit to the customs authority copy of the document through which the corresponding motion of infraction or demand was filed before the competent authority. After this period has expired without the right holder, legal representative or appointee submitting the requested information, the customs authority shall raise the release suspension.

Article 18.- Maximum suspension period

Notwithstanding the previous article and in accordance with article 10.3 of the Law, the maximum period for which the customs authority shall maintain the merchandise suspended shall be of ten (10) working days counted starting on the date of notification of the administrative action referred to in article 17 of this Regulation, except in cases of extensions established in article 10.4 of the Law.

Article 19.- Inspection, raising of the measure and disposition of the goods

For the ex officio procedure, what is established in articles, 12, 13, 14 and 15 of this Regulation shall be applied.

Complementary Final Provision

Only Provision.- SUNAT shall approve the procedures, instructions, circular letters, and other documents necessary for the application of what is established in the Law and in this Regulation.