
**THE MINISTER OF INDUSTRY AND
TRADE**

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**SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom – Happiness**

Hanoi, April 01, 2011

CIRCULAR OF THE MINISTRY OF FINANCE

Guiding the struggle against smuggling and protection of intellectual property rights in customs

Pursuant to the Law on Intellectual Property Right No. 50/2005/QH11 dated November 29, 2005; the Law on Amending, supplementing a number of Articles of the Law on Intellectual Property Right No. 36/2009/QH12 dated June 19, 2009;

Pursuant to the Law on Customs No. 29/2001/QH10 dated June 29, 2001; the Law on Amending, supplementing a number of Articles of the Law on Customs No. 42/2005/QH11 dated June 14, 2005;

Pursuant to the Law on Complaints and Denunciations No. 09/1998/QH10 dated December 02, 1998; the Law on Amending, supplementing a number of Articles of the Law on Complaints and Denunciations No. 26/2004/QH11 dated June 15, 2004; the Law on Amending, supplementing a number of Articles of the Law on Complaints and Denunciations No. 58/2005/QH10 dated November 29, 2005;

Pursuant to the Ordinance on Handling of Administrative violations dated July 02, 2002; the Ordinance on Amending, Supplementing a Number of Articles of the Ordinance on Handling of Administrative violations dated April 02, 2008;

Pursuant to the Decree No. 119/2010/ND-CP dated December 30, 2010 of the Government amending, supplementing a number of Articles of the Decree No. 105/2006/ND-CP dated September 22, 2006 of the Government detailing and guiding the implementation of a number of Articles of the Law on Intellectual Property Right on Protection of Intellectual Property Rights and on State Management of Intellectual Property;

Pursuant to the Decree No. 154/2005/ND-CP December 15, 2005 of the Government detailing a number of Articles of the Law on Customs on customs procedures and the inspection and supervision by customs offices;

Pursuant to the Decision No. 65/2010/QĐ-TTg dated 25/10/2010 of the Prime Minister promulgating the Regulation on responsibility and activity coordination among state administration agencies in the struggle against smuggling, fake goods and trade fraud;

Pursuant to the Decree No. 118/2008/ND-CP dated November 27, 2008 of the Government regulating functions, tasks, powers and organizational structure of the Ministry of Finance;

The implementation of the Resolutions of the Government No. 25/NQ-CP dated June 02, 2010 on simplification of administrative procedures under the scope of management function of Ministry, Branch and No. 68/NQ-CP dated December 27, 2010 on simplification of administrative procedures under the scope of management function of the Ministry of Finance;

The Ministry of Finance guides the in the struggle against smuggling and protection of intellectual property rights customs as follows:

Chapter I.

GENERAL PROVISIONS

Article 1. Scope of application

This Circular guides on the struggle against smuggling and protection of intellectual property rights customs.

Article 2. Subjects of application

Customs agencies at all levels; exporters, importers; organizations and individuals being owners of intellectual property rights, owners of genuine goods being counterfeited or the legal representatives of the owners or other organizations and individuals involved.

Article 3. Interpretation of terms

The terms used in this Circular are construed as follows: 1. Fake goods include:

a) Faking quality and utility: the goods have no use value or use value not being proper to its origin, nature, names and the utility of goods;

b) Faking labels and packaging of goods: goods being counterfeited names and addresses of other traders on label or packing of the same goods, goods being counterfeited the indications of origin or place of manufacturing, packaging, assembling on the label or packing of goods;

c) Counterfeiting intellectual property as stipulated in Article 213 of the Intellectual Property Law including goods being branded, having sign identical to, or are difficult to distinguish marks, geographical indication under protection for the such goods without the permission of the brand's owner or of organization managing geographical indications; goods which are copies made without the permission of the subject of copyright rights or related rights;

d) The types of decals, quality stamps, anti-counterfeiting stamps, warranty cards, shrink film seal with contents faking names and addresses of traders, the origin of goods, place of production, packaging and assembling;

e) For goods to be subject to specialized management if the law has separate provisions, those provisions shall be applied to identify fake goods.

2. Protection of intellectual property rights in the field of customs: is that the customs agencies apply the measures to control export and import goods related to intellectual property as stipulated in Article 216, item 2, Chapter XVIII of the Intellectual Property Law and the measures specified in clause 8, 9, 10, Article 4, Chapter I and item 5, Chapter III of the Customs Law and relative legal documents to detect, fight and handle violations of infringing intellectual property rights in the field of customs.

3. Suspension of customs procedures for goods being suspected or infringing intellectual property rights is the measure to be conducted at the request of subjects of intellectual property rights in order to gather information and evidence of the goods lot for the subjects of intellectual property rights to conduct the request right to handle the infringement and to require the application of urgent reliefs or measures of prevention and ensuring administrative sanctions.

4. Customs inspections on fake goods, goods of infringing intellectual property rights are those to check customs records, and relative documents and actual inspection of goods, transport means performed by the customs agencies in order to detect goods being suspected to be fake goods, goods of infringing intellectual property rights.

5. Customs supervision of fake goods, goods of infringing intellectual property rights are professional measures applied by the customs agencies to ensure the original status of goods being subject to customs management.

6. Customs control of fake goods, goods of infringing intellectual property rights are measures of patrol, investigation or other professional measures applied by customs agencies to prevent, combat smuggling and illegal transportation of goods being fake goods, goods of infringing intellectual property rights across borders.

7. Written application includes: the request for inspection and supervision of export and import goods related to intellectual property and applications for suspension of conducting customs procedures (forms are issued attached herewith).

8. The applicants are subjects of intellectual property rights (including owners of intellectual property rights and organizations and individuals are transferred the intellectual property rights by its owners) or persons are legally authorized the intellectual property rights by subjects of intellectual property rights.

9. Infringement of intellectual property rights is the acts referred to Article 28, Article 35, Article 126, Article 127, Article 129 and Article 188 of the Intellectual Property Law.

Article 4. Rights and obligations of relative organizations, individuals

1. Being kept secret by the customs agencies for trade information supplied to such agencies, except for the cases that must supply to the functional agencies according to provisions of law.

2. Subjects of intellectual property rights, owners of genuine goods being faked or legal authorized representatives are participated in together with customs agencies in activities of inspection, supervision, control, definition, evidence collection to define goods infringing intellectual property rights, fake goods, process of handling violating goods, material evidence except for the case of necessary to protect trade secrets, state secrets according to law regulations.

3. Complaints and claims of decisions to handle fake goods, goods infringing intellectual property rights, the application of measures to control the exports and imports related to intellectual property of customs agencies under provisions of law on complaints and denunciations and the law on procedures for settlement of administrative cases.

4. Supplying to customs agencies the information, documents related to export and import goods being suspected to infringe intellectual property rights, fake goods.

5. Supporting and coordinating with customs agencies in handling, destruction of goods infringing intellectual property rights, fake goods.

Article 5. Powers and responsibility of customs agencies

1. Deploying the application of measures of control, customs supervision, customs control in accordance with the customs law, commercial law and intellectual property law for goods being suspected to be fake goods, goods infringing intellectual property rights.

2. Explaining and guiding concerned organizations and individuals to comply with law regulations on against fake goods and execution to protect intellectual property rights, the provisions of the Customs Law, Law on Intellectual Property and guidance in this Circular. Notify in writing to concerned organizations and individuals on the result of settlement, handling.

3. Coordinating with state administration agencies, the function forces against fake goods and protect intellectual property rights in the combat and handling fake goods, goods infringing intellectual property rights in accordance with current law.

4. Requiring concerned individuals and organizations to hand in, present relative documents and vouchers to explain and clarify the doubtful question of the customs agencies on exports, imports infringing intellectual property rights, fake goods.

5. Settling claims and complaints of concerned organizations and individuals on the handling of fake goods, goods infringing intellectual property rights and the application of measures to control exports, imports related to intellectual property of the customs agencies in accordance with the law regulations.

6. Implementing the report regime, keeping documents, records relating to the act of against fake goods and protection of intellectual property rights under current provisions of the Customs Branch.

Chapter II.

INSPECTION, CUSTOMS SUPERVISION AND CUSTOMS CONTROL OVER FAKE GOODS, GOODS RELATING TO INTELLECTUAL PROPERTY RIGHTS

ITEM 1.

INSPECTION, CUSTOMS SUPERVISION OVER FAKE GOODS DURING THE COURSE OF CUSTOMS PROCEDURES

Article 6. Custom inspection

1. During the course of customs procedures for imports, exports, the customs agencies are responsible for:

a) Inspecting and comparing the declared information of the owners on the declarations of names, trademarks, origin, value, packing, goods quality and transport road of goods with information collected by the customs agencies to determine the signs of fake goods.

b) Inspecting and comparing the contents of the conclusions of the State administration agency on exports, imports, results of inspecting customs record with the results of actual goods inspection.

c) Cross-checking inspection results with law regulations on fake goods. 2. When detecting goods having signs of infringement in the cases such as: - Importing goods does not comply with the labeling of goods as stipulated in Decree No. 89/2006/ND-CP dated 30/09/2006 of the Government on goods labeling, for example: food additives with no date of production, using instruction, importing cosmetics not writing the quantity, compositions.

- State inspection conclusion on quality or goods quality appraisal results identifying goods not reaching quality for import or export; not meeting technical standards, norms of Vietnam. For example: imported liquor does not reach standard of Vietnam or does not meet standards publicized; imported pharmaceutical products with pharmaceutical substance but not proper contents registered or with pharmaceutical substance different from the one written in label.

- Goods in the list or under notification of the State administration agencies that do not meet quality standards or are not allowed selling in the market. For example: pharmaceutical products from importing origin in which according to the notification of health agencies, their circulation is suspended due to not reach the quality standards.

- Content on labels of goods does not in accordance with the documentation supplied with the product, the standard mark, mark of conformity; expired goods or signs of erasing expiry indicated on product packing. - Using the packing of other manufacturers for their own products or not recording barcode on products, barcode on the products inconsistent with the origin declared on customs declarations, certificates of origin. Leaders of the Customs Branches where detecting infringing goods shall consider, decide to apply measures to prevent administrative violations and ensure the administrative sanctions under the current regulations and measures carried out to verify the goods in accordance with Article 7 of this Circular.

3. Where detecting goods which have signs of violation upon information supplied by the owners of genuine goods being counterfeited, the leaders of the Customs Branches where detecting goods with suspicion of violation shall be responsible for immediately notifying to the owners of genuine goods being counterfeited, and concurrently, considering to decide the application of measures to prevent administrative violations and ensuring the administrative sanctions under the current regulations and carrying out verification measures for goods under provision in Article 7 of this Circular.

Article 7. Verification and handling of goods

1. During the time the goods are temporarily detained or be subject to preventive measures as prescribed, the Customs Branches are responsible for performing the following tasks:

a) Requiring goods owners, owners of genuine goods being counterfeited (as its owners are defined) to provide documents relating to goods (catalog, the appraisal conclusion and documents from foreign countries, the results of handling similar cases).

b) Coordinating with goods owners, owners of genuine goods being counterfeited their sample, to unify to select appraisal trader to conduct the appraisal. Conclusion of appraisal trader is valuable for the parties to implement.

c) Where the customs declarers and customs agencies are inconsistent in the selection of expertise trader, customs agencies shall select the technical organization appointed to inspect, serve the state management or expertise trader (in case of technical organizations appointed to inspect having written refusal). Conclusions of the technical organization appointed to inspect, serve the state management or expertise trader is valuable for the parties to implement. If customs declarer does not agree with this conclusion, the complaints may be made under the provisions of law. Procedures to take sample, techniques to take sample, place to store sample, time to store sample, the images of goods shall be made under the guidance in clause 3, 4, 5, 6 and 7, Article 15, Circular No. 194/2010/TT-BTC dated December 06, 2010 of the Ministry of Finance.

d) Coordinating with the control forces of anti-smuggling in the verification, investigation under professional skill stipulated.

e) Reporting to the provincial, city Customs Branches and General Department of Customs for on time guidance to deal with complicated cases, goods with high value relating to many localities, state agencies and international organizations.

f) Decision on temporary release of goods for storage in accordance with provision in clause 4, Article 25 of the 2005 Customs Law amending and supplementing in cases goods owner having requirement to get goods for preservation.

3. Expiry of temporary detention or time to apply preventive measures as prescribed, if sufficient grounds to conclude that the suspected goods are counterfeit one, the customs agencies conduct to handle administrative violations in accordance in Chapter IV of the Circular. 4. Where the infringing goods having signs of crime as prescribed in the Penal Code, the customs agencies are responsible for transfer to the competent agencies to conduct investigations and prosecutions under the provisions of law.

5. Completing customs procedures for goods lot in the case the goods are concluded not being the counterfeit one. The settlement of complaints or claim of goods owners for compensation of damages caused due to the temporary detention of goods by customs agencies shall be conducted according to current regulations on settlement of complaints and compensation.

ITEM 2.

INSPECTION, CUSTOMS SUPERVISION TO GOODS RELATING TO INTELLECTUAL PROPERTY RIGHTS DURING THE COURSE OF CUSTOMS PROCEDURES

Article 8. Customs inspection

1. In the process of customs procedures for exports or imports goods, the customs agencies are responsible for:

a) Inspection and comparison between the information declared by the goods owners in the declarations on names, trademarks, origin, value, packing, quality of goods, road of transporting goods with information in the data system on application requesting for inspection and monitoring exporting and importing goods related to intellectual property, risk management portfolio of intellectual property and information collected by customs agencies to determine the signs of goods infringing intellectual property rights.

b) Comparison between results of checking customs dossiers, the actual goods inspection and results of checking the information with provisions of law on goods infringing intellectual property rights and the provisions on procedures controlling exports and imports related to intellectual property. 2. Upon detection of goods being suspected to infringe the intellectual property rights, the Customs Branches make the announcement as prescribed in Article 9 of this Circular.

3. Where there is no information requesting to protect intellectual property rights, but in the process of inspection, the Customs Branches detect and suspect that imported goods faking on intellectual property (e.g. goods bearing brands of Vietnamese enterprises but was imported from abroad without sourcing contracts).

Leaders of Customs Branches direct the actual inspection of goods, taking samples or photography of goods, exchange and supply of information related to the unit being main responsible for intellectual property at the General Department of Customs, Customs Departments of provinces and cities to determine the completion of customs procedures or temporary detention of goods if the suspicion is identified being basis.

Article 9. Notification for suspected goods

1. Customs Branches notify to the applicants for the suspected goods (according to Form No. 03-SHTT issuing together with this Circular) and fax to the applicants.

2. During three (03) working days from the date of notification of suspected goods, the Customs Branches are responsible for performing the following tasks:

a) Decision to suspend customs procedures after receiving the written request for suspension of customs procedures and ensuring money (20% of goods lot value need to be applied measures of suspension of customs procedures or at least twenty million dong if could not determine the value of such goods lot) or guarantee documents issued by a bank or other credit institutions specified in clause 2, Article 217 of Intellectual Property Law.

b) Where there are sufficient grounds to assert that the to be notified goods are counterfeit on intellectual property, Branches' leaders review the decision to immediately apply administrative measures to handle as prescribed in Article 214 and Article 215 of Intellectual Property Law. At the same time coordinate with the control forces at all levels to verify and collect information of the goods in accordance with provisions.

c) Continuing to conduct customs procedures for goods lot in case of not being received written request for suspension of customs procedures, not receiving guarantee money or guarantee documents.

Article 10. Suspension of customs procedures

1. Customs Branches decide to suspend customs procedures (according to Form No. 04-SHTT attached herewith). Decision to suspend is sent by registered mail and fax to the concerned parties.

2. The duration of suspension of customs procedures is 10 (ten) working days since the date that applicants for suspension receive the decision to suspend customs procedures. In case of arising requirement for expertise or professional consultation from the State administration agencies on intellectual property, customs agencies will continue the suspension of customs procedures until they get the expertise result or expert opinion. Customs Branches where have decided the suspension implement the extension of the duration to suspend after the applicant has an application for extension enclosed with the guarantee money or guarantee documents according to law regulations and notify to the applicant, goods owner and concerned parties (according to Form No. 05-SHTT issuing together with this Circular).

3. During the time of suspension or time to apply preventive measures as prescribed, the Customs Branches where have decided the suspension are responsible for performing the following tasks:

a) Requiring goods owners, owners of intellectual property rights to provide documents relating to goods (catalog, the expertise conclusion, documents from foreign countries and results of handling similar cases).

b) Directly requiring for expertise in the expertise organization as stipulated in clause 1, Article 40 of Decree No. 105/2006/ND-CP dated September 22, 2006 or of the Government or consulting the expertise opinions of the State administration agencies on Intellectual Property.

c) Arranging for organizations, individuals to take sample to implement its right of expertise requirements as specified in clause 2 of Decree No. 105/2006/ND-CP dated September 22, 2006 of the Government. Procedures to take sample, techniques to take sample, place to store sample, time to store sample of the goods comply with the guidance in clause 3, 4, 5, 6, Article 15 of Circular No. 194/2010/TT-BTC dated December 06, 2010 of the Ministry of Finance.

d) Conducting the additional expertise, re-expertise in accordance with provision in Article 50 of Decree No. 119/2010/ND-CP dated December 30, 2010 of the Government on amending, supplementing a number of Articles of Decree No. 105/ 2006/ND-CP dated September 22, 2010 by the Government.

e) Coordinating, exchanging with State administration agencies on intellectual property in the area when having dispute, claim for the right subject, protection capability, the scope of protection of intellectual property rights, competence to handle violations.

g) Reporting to the provincial, city Customs Department and Customs General Department for direction to handle timely in case of suspended goods lot having high value; goods being suspected to infringe intellectual property rights of famous brands; the case involving in many localities, state agencies, international organizations; having disputes arising, complaints related to rights subjects, the protection capability, scope of protection of property intellectual rights, competence to handle violations.

4. Expiration of suspension of customs procedures or time to apply preventive measures as prescribed, the Customs Branches where have decided the suspension are responsible for performing one or simultaneously performing the following tasks:

a) Deciding to settle the case according to administrative procedures when asserting that suspended goods infringing the intellectual property rights on the basis of the conclusion of intellectual property expertise organizations (in the case for expertise requirement); professional opinions of the State administration agencies on intellectual property, the other State administration agencies (in the case of collecting professional opinions), documents, evidence supplied by subjects of intellectual property rights. Deciding to temporarily detain goods in cases of having grounds to assert that suspended goods are fake goods on intellectual property; goods

infringing intellectual property rights are the foodstuff items, food, pharmaceutical, cosmetics, food for livestock, fertilizers, veterinary drugs, plant protection agents, building materials.

b) Completing customs procedures to suspended goods according to provision in Article 11 of this Circular.

c) Implementing according to opinion of the court in case of civil suitcase.

d) Handing over the cases for other intellectual property executing agencies to handle in case of defining the violations not belonging to competence to handle of the customs agencies.

e) Suspending the handling after receiving document from the state administration agencies on intellectual property to notify of the dispute, claim for the right subject, protection capacity, and scope of intellectual property protection.

g) Handling over to the competent agencies to conduct the investigation, prosecution according to law regulations in case of defining violations having crime signs as provided in the Penal Code.

Article 11. The continuing of customs procedures

1. The Custom Branches to decide the suspension is responsible for continuing to conduct customs procedures for the goods lot and notifies to relevant parties (upon Form No. 06-SHTT attached hereto) in the cases:

a) Not received written confirmation of the court that the agency received the written request for dispute settlement on infringement of intellectual property rights relating to the goods lot being suspended the customs procedures and not handling the case according to procedure of handling administrative violations for the goods lot exporter and importer.

b) The Decision to suspend the customs procedures is terminated or withdrawn according to the decision to settle complaints and denunciations;

c) The requester withdrew the written request for suspension of customs procedures except for exports, imports are intellectual property fake goods; stamps, labels and other products bearing the trademark, fake geographical indications.

d) Conclusion of the competent agencies that there are insufficient grounds to determine the violation.

e) Other cases according to law regulations.

2. Within 10 (ten) working days since the date of completing custom procedures for the goods lot being suspended, the Custom Branches is responsible for:

a) Sending written notification forcing the requester for suspension of customs procedures to pay the costs of warehousing, storage of goods and other expenses incurred by the customs agencies and other relevant agencies, organizations and individuals in accordance with the law regulation on customs.

b) Refunding to the requester for suspension of customs procedures the remaining guarantee money after having done the obligations of compensation and payment for costs in accordance the law regulations.

ITEM 3.

CUSTOMS CONTROL FOR FAKE GOODS, GOODS RELATING TO INTELLECTUAL PROPERTY

Article 12. Responsibility of customs control force

1. Customs control force applies custom control professional measures according to provision in Decision No. 65/2004/QĐ-TTg dated April 19, 2004 of the Prime Minister to conduct the investigation, detection, detention and handling of goods infringing intellectual property rights and fake goods under regulations of law.

In the scope of customs operational area, customs control force is responsible for control over fake goods, goods relating to intellectual property rights.

Out of the scope of customs operational area, customs control force is responsible for coordination with concerned function agencies to implement measures to inspect, detain and handle as prescribed. 2. When performing duties, customs control force is entitled to require relevant organizations, individuals, customs units at all level to supply dossiers, documents, to coordinate with, create conditions in order to perform its assigned function, duties.

Article 13. Deployment of control professional skill

1. Customs control force actively collects information according to law regulations to catch situation and detect objects, modes, tricks of violating operations relating to fake goods and goods infringing intellectual property rights.

2. When receiving or detecting information on fake goods, goods infringing intellectual property rights, the customs control force directly inspect or coordinate with the Customs Branches to conduct procedures for inspection; cross-check with relative law regulations and detected actual goods to issue decision to temporarily detain goods.

3. Conducting the collection, evidence verification, inspection, crosschecking, assessing supplied information relating to fake goods, goods infringing intellectual property rights with actual goods being detained, suspended to determine violating goods.

4. In case of having grounds to determine violating goods, applying preventive measures according to law regulations on handling of administrative violations and implementing next steps as provided in Chapter IV of this Circular. In case of not having grounds to determine violating goods and then transferring dossiers to the Customs Branch for continuing customs clearance for the goods lot.

Chapter III.

RECEIPT AND SETTLEMENT OF WRITTEN REQUEST FOR CONTROLLING IMPORTING, EXPORTING GOODS RELATING TO INTELLECTUAL PROPERTY

Article 14. Provision on written request

1. Applicant applies to the customs agencies 01 original of written request (upon Form No. 01-SHTT, No. 02-SHTT attached herewith) when having requirement for inspection, supervision or suspension of customs procedures.

2. Competence to receive written request.

a) General Department of Customs (Anti-smuggling and Investigation Department) receives written request for inspection, supervision of importing, exporting goods relating to intellectual property.

b) General Department of Customs (Anti-smuggling and Investigation Department), the provinces, cities Department of Customs and the Customs Branches receive written request for suspension of customs procedures.

3. Effective time of the written request.

a) Written request for inspection, supervision of importing, exporting goods relating to intellectual property is in effect for 01 (one) year since the time the customs agency notifies to accept the written request and is extended one additional year when applicant has request for extension.

b) Within 10 (ten) days since the date of receipt of the effective document requesting for extension of the written request for inspection, supervision of importing, exporting goods relating to intellectual property, General Department of Customs (Anti-smuggling and Investigation Department) is responsible for notifying to the applicant and relative customs units on the handling result.

4. The applicant is responsible for notifying to the customs agencies for changing requesting contents (including narrowing/opening objects of intellectual property rights, narrowing/opening list of goods with requirement of inspection, supervision) during the effective period of written request.

Article 15. Documents attached to the written request

1. Applicants are responsible for applying to the customs agencies the certified true copy the following documents, each type of document shall be one copy. In case of any doubt to documents applied by applicant, the customs agencies must cross-check with the originals to ensure the accuracy.

a) Evidence to prove the right subject in accordance with provision in Article 24 of Decree No. 119/2010/ND-CP of December 30, 2010 of the Government.

b) Documents relating to goods with request for inspection, customs supervision, include: List of exporters, importers of lawful goods; Method of importing, exporting genuine goods; sheet to distinguish genuine goods fake goods; Documents on origin of genuine goods, its images.

c) Authorization letters or contracts to authorize for application (in case of being authorized to the application) in case of authorization. Authorization letters from abroad must be legalized by consular according to regulations.

d) Information estimating time and place to conduct goods import, export procedures (if any).

e) Expertise result of the expertise organizations on intellectual property (if any).

g) Handling conclusion of other execution agencies for the similar violations detected and processed (if any).

h) Payment vouchers or bank guarantee documents or of the credit institutions to ensure the implementation of relevant obligations in case of request for suspension of customs procedures specified in clause 2, Article 217 of Law Intellectual Property.

2. The documents specified in clause 1 point of this Article, if they have been already submitted to the customs agencies attached to the written request for inspection and supervision of goods related to intellectual property, then when filing the written request for suspension of customs procedures, the applicant shall not be required to hand in. 3. The applicant may hand in to the customs agencies the documents provided in Article 14, 15 of this Circular under the form of written paper and electric file, floppy disk.

Article 16. Inspection and handling of application

1. Contents of inspecting application

a) Application, relative documents were in full according to provision in clause 1, Article 14 and clause 1, Article 15 of this Circular.

b) Competence to receive application of customs agencies.

c) Applicant's status according to law regulations.

d) Effective time limit of certificates of protection of intellectual property rights.

e) Documents, samples, objects (or photographs) suitable to the content of the intellectual property rights with protection requirement or contents to denounce violations.

g) Authorization content in accordance with the operational function of the customs agency and the applicant (if being authorized to apply).

2. Time limit for settling application

No later than 20 (twenty) days since the date of receiving the application for inspection and monitoring of exports, imports, and no later than 16 (sixteen) working hours from the time receiving the application for suspension for customs procedures, the customs agencies receiving the application are responsible for notifying in writing to the applicant of the acceptance of the application or not. For applications for suspension of customs procedures, Customs Branches issue the decision to suspend the customs procedures replacing the application acceptance notification.

3. Refusal of receiving application

The customs agencies refuse to receive application in the cases.

a) The application is sent to the incorrect competent agencies to receive it.

b) Having grounds to asset that applicant is insufficient status to apply in accordance with law regulations.

c) The application is flawed and although amendment had been requested but the applicant still fails to perform or performed but unsatisfactory.

d) During the handling of the application, the customs agencies receive papers of the State administration agency on intellectual property notifying the disputes or complaints on the right subject, protective capacity, the scope of protection of intellectual property rights.

4. Implementing the application for inspection and monitoring of exports, imports

a) General Department of Customs (Anti-Smuggling and Investigation Department) forwards the application and notifies the acceptance of application to the provincial, city Department of Customs, control team under Anti-Smuggling and Investigation Department.

b) Customs Departments of provinces and cities receiving the notice, the application from the General Department of Customs and forward to the Customs Branches, concerned functions department and the control team under the Department of Customs.

c) Customs Branches receive the notice, the application from the provincial, city Customs Departments and forward to the team, professional group and concerned individuals.

5. Implementing the application for suspension of customs procedures.

a) Based on the nature and seriousness of the case and of the violations or each specific case, the receiving agency will send directly to the Customs Branch where the procedures of customs are implemented for the goods lot being suspected of infringing or to the smuggling combat control forces to implement in case the application receiving agency is the General Department of Customs/Customs Departments of provinces and cities.

b) Customs branches' leaders are responsibility for organizing, deploying to the team, professional group and concerned individuals to perform in case Customs Branch receiving the applications.

Article 17. Expiration of the application

General Department of Customs (Anti-Smuggling and Investigation Department) are responsibility for notifying to concerned customs units for the cancellation of application for inspection, supervision the imports, exports relating to intellectual property in case.

a) The applicant has a written request for terminating the inspection and supervision of customs agencies for goods with protection requirement.

b) Expiry of validity of the written request for inspection and supervision, the applicant has no written request for extension.

c) State administration agencies on intellectual property notify the cancellation of the protection certificate of intellectual property rights granted to the applicant.

Chapter IV.

HANDLING OF VIOLATIONS

Article 18. Determination of value of violating goods

1. The value of goods infringing intellectual property, fake goods in customs is determined on the basis of the declared value of the goods owner on the declarations, including all types of taxes (if any). The goods value and the basis to value must be clearly stated in the minutes of administrative violations and stored in case files.

If having the basis to assert the goods value of the goods owner declared on the declarations is not correct, customs agencies carry out to define according to current regulations the customs valuation determination at the time to make records of administrative violations.

2. In case goods infringing industrial property rights may not determine value, customs agencies based on the provision in clause 13 Article 10, clause 12 Article 11, clause 11 Article 12, clause 8 Article 14 of Decree No. 97/2010/ ND-CP dated September 21, 2010 to conduct the application of the fine form to organizations, individuals committing violation. 3. In case value of fake goods is determined upon other bases, implementing according to guidance in clause 2 Article 63 of Decree No. 06/2008/ND-CP dated January 16, 2008 of the Government.

Article 19. Handling of violations of infringing intellectual property rights

1. The handling of violations of infringing intellectual property rights, goods infringing intellectual property rights shall be implemented according to guidance in the Decree No. 97/2010/ND-CP dated September 21, 2010, Decree No. 47/2009/ ND-CP dated May 13, 2009, Decree No. 54/2005/ ND-CP dated April 27, 2005 and relative legal documents.

2. Within 10 (ten) working days since the effective date of the decision to sanction, the customs agencies are responsibility for:

a) Notifying in writing to force the violators to pay expenses arising due to administrative violations.

b) Refunding the paid guaranteeing amount to the person requesting suspension of conducting customs procedures.

Article 20. Handling of violations of infringing fake goods (except for the fake goods on intellectual property rights)

The handling for violations is implemented according to guidance in Decree No. 06/2008/ND-CP dated January 16, 2008, Decree No. 112/2010/ND-CP dated December 01, 2010 of the Government and documents to guide the implementation.

Chapter V.

IMPLEMENTATION ORGANIZATION

Article 21. Responsibility of implementation

1. The General Department of Custom is responsible for guiding, directing the subordinate units to implement specifically the provisions in this Circular.

2. Customs agencies, customs declarer, applicants requesting for controlling import, export goods relating to intellectual property, violating denunciators and relative organizations, individuals are responsible for the implementation according to current provisions and guidance in this Circular.

Article 22. Reward and handling of violations

1. Customs agencies, customs officers having achievements in the struggle of fake goods and protection of intellectual property rights shall be considered to reward according to current regulations.

2. Customs agencies, customs officials lacking a sense of responsibility, causing damages to the applicants or owners of goods being infringed intellectual property rights or being faked goods, the customs declarers, depending on the nature and seriousness of their violations, shall be disciplined or prosecuted for criminal liability according to law regulations.

Article 23. Effect

1. This Circular takes effect on May 19, 2011, replaces the previous guiding documents contrary with provisions in this Circular.

2. During the enforcement, if obstacles arise, the relative persons need to reflect promptly on the Ministry of Finance for studying, handling.

FOR THE MINISTER

DEPUTY MINISTER

Do Hoang Anh Tuan
