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Islamic Republic of Afghanistan
Ministry of Finance

(DRAFT)

Order on Customs Control of
Intellectual Property Rights

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Chapter-One General Provisions

Basis

Article 1

This Regulation has been put into effect based on Article 52 of the Customs Code in order to provide a basis for enforcement of intellectual property rights at Afghanistan's customs borders.

Objectives

Article 2

The main objectives of this Regulation are:

1. To provide mechanism for enforcement of Intellectual Property Rights upon importation, exportation and transit;
2. To maintain and safeguard the Intellectual Property Rights;
3. To determine the duties and obligations of right-holders and Customs authorities inside of Afghanistan with respect to enforcement of intellectual property rights.

Terms

Article 3

The terms used in this Regulation shall have the following meaning:

Intellectual Property Rights: Exclusive rights, whether moral or economic, arising under Afghanistan's laws on intellectual property.

Right Holder: A natural person or legal entity, which, under the laws of Afghanistan, is the owner of an intellectual property right, its successors in title or its duly authorized exclusive licensee.

Goods Infringing Intellectual Property Rights: Any goods whose production, reproduction, distribution, or other use violates the intellectual property laws of Afghanistan. If such production, reproduction, distribution or other use took place outside Afghanistan, the goods are deemed to be infringing if those acts would have constituted an infringement in Afghanistan had they been undertaken in Afghanistan. "Goods infringing intellectual property rights" shall be understood to include goods protected under copyright or related rights, whose rights management information has been removed, altered, or added without effect.

or protects any copyright or any related right facilitates the detection of counterfeit trademark goods or goods protected by a copyright or related right.

Protection-Defeating Devices: Devices, products, components or parts, such as unauthorized smart cards, set top decoders or circumvention software, which are primarily designed or adapted

that the use of the geographical indication is a violation of national law in the country of ultimate destination or sale; and

7. The prescribed application fee.

(2) In the event any of the particular information listed in paragraph 1 of this Article is not provided with the application, the Customs authorities shall, if it deems such information materially necessary, ask the applicant to supplement the application. The Customs authorities shall not deny an application without further examination on the basis that the applicant has not provided some of the information listed in paragraph 1, nor shall the Customs authorities impose an evidentiary burden on the applicant which is:

1. undue under the circumstances of the case, or
2. which would deter recourse to border enforcement measures.

Time Limit for Issuance of Decision

Article 6

(1) Where the application relates to shipments in general, the Customs authorities shall render a decision and notify the applicant in writing whether the application has been granted or rejected within a reasonable period of time, not to exceed thirty working days from the receipt of the application.

(2) Where the application relates to a specific shipment of actual suspected goods infringing intellectual property rights or protection-defeating devices, the Customs authorities shall render a decision and notify the applicant in writing whether the application has been granted or rejected as soon as possible, but no later than within three working days.

Security

Article 7

The Customs authorities may require an applicant to provide a security or equivalent assurance or an undertaking, sufficient to protect interests of the importer, consignee, consignor, exporter or owner of the goods and the competent authorities. However, such security or equivalent assurance shall not be fixed at an amount, which would unreasonably deter recourse to these procedures.

Rejection of Application

Article 8

If the application is rejected, the Customs authorities' written notification under Article 6 shall clearly state the reasons for the rejection.

Chapter-Three Acceptance and Customs Action

Granting of Application

Article 9

If the application is granted, the Customs authorities' written notification under Article 6 shall specify the action that the Customs authorities will take, and the time period during which they will take such action.

Initiation of Proceedings

Article 14

Upon being served notice of a suspension or detention, the applicant for suspension or other right holder shall be obliged to promptly initiate judicial proceedings leading to a decision on the merits of his claim of infringement.

Period of time for suspension

Article 15

(1) Subject to the procedure set out in Article 20(2), if, within a period of seven working days after the applicant has been ~~informed~~ notice of the suspension or other action, the Customs authorities have not been informed that judicial proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that a Court has taken provisional measures prolonging the action, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.

(2) This Article also applies in cases including the detention of goods in the course of any criminal investigation.

(3) The time limit set out in paragraph (1) of this Article may be extended by another ten working days in appropriate cases. In the case of perishable goods suspected of infringing an intellectual property right, the period shall be three working days and may not be extended.

(4) If judicial proceedings leading to a decision on the merits of the case have been initiated, a review, including a hearing if requested, shall take place, upon request of the defendant, with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

(5) Notwithstanding the above, where the suspension of the release of goods is continued in

2. The importer, the exporter, the consignee, the consignor, the owner of the goods, or the declarant has been served by Customs with the notice of suspension, has been informed about the possibility of confiscation and destruction or disposal outside the channels of commerce by default of the allegedly infringing goods and he does not oppose the measure within twenty working days after having been served the notice, or alternatively if after reasonable efforts by Customs the importer, exporter, consignee, consignor, the owner of the goods, or the declarant has not been identified.

(3) In the event the applicant is granted an extension of the time limit for taking legal actions, such extension is automatically applied to the suspension procedure referred to in this Article.

(4) Right holders may, prior to the destruction or the disposal of the suspended goods, apply for a retention of samples, to the extent that such samples are needed as evidence in pending or future legal actions regarding infringements of intellectual property rights.

Exception for Minimal Quantities Article 21

A single copy of a non-commercial nature of a work made by a person using his own means, and intended strictly for his own personal use and contained in personal luggage or sent in a small consignment is not subject to the suspension procedure provided by this Regulation.

Liability Article 22

Public authorities and officials acting in good faith and following the procedures set out in this Regulation and in applicable implementing regulations shall be exempt from civil and criminal liability for any failure to detect goods infringing intellectual property rights or protection-defeating devices, the inadvertent release of goods or devices, or any other action in respect of such goods or devices.

Costs Article 23

(1) An importer, exporter, consignee, consignor or the owner of the goods may seek appropriate monetary compensation for injury caused through wrongful detention of goods or devices.

(2) The owner, importer, exporter, consignee or consignor, as applicable, shall be liable to pay the costs of storage and destruction of any goods suspended and finally determined to be goods infringing intellectual property rights or protection-defeating devices.

Conflicts

Date of Enforcement
Article 25

This Regulation shall enter into force as from the date of its Publication in the Official Gazette. Starting from its enforcement, provisions in other regulations inconsistent with this Regulation shall be repealed.