

REGULATION ON ACTIONS OF THE CUSTOMS AUTHORITY
APPLICABLE TO GOODS SUSPECTED OF INFRINGEMENT
OF INTELLECTUAL PROPERTY RIGHTS

I. GENERAL PROVISIONS

Scope of Application

Article 1

- (1) This Regulation shall prescribe the conditions applicable to goods subject to customs procedure suspected of infringing intellectual property rights, as well as the manner of application of such measures.
- (2) This Regulation shall not apply to:
 - 1) goods which bear a trade mark with the consent of the holder of that trade mark or which are protected by a copyright or neighboring right or a design right and which have been manufactured with the consent of the Right Holder but are placed in a customs procedure without the latter's consent;
 - 2) goods referred to in subparagraph 1 of this paragraph which have been manufactured or bear a trade mark under conditions other than those agreed with the holders of the rights in question;
 - 3) non-commercial goods, personal belongings and gifts brought by travelers, i.e., to goods intended strictly for the importer's personal use, provided that multiple identical copies of the same product are not being imported or exported.

Definitions

Article 2

- (1) For the purposes of this Regulation:
 - 1) 'Intellectual Property Rights' shall mean copyright and related rights, trademarks, geographical indications, designs, patents and layout-design (topographies) of integrated circuits, as defined by specific legislation governing each particular area.
 - 2) 'Right Holder' shall mean the holder of any intellectual property right or his/her successor in title or any other person duly authorized by the Right Holder;

- 3) 'Infringing Goods' shall include but not limited to Pirated Copyright Goods, Counterfeit Trademark Goods, goods infringing design rights, and goods infringing patents, as well as any goods primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of any effective technological measure, device or component that is designed to prevent or restrict acts, in respect of works or other protected subject matter, which are not authorised by the right holder;
- 4) 'Pirated Copyright Goods' shall mean any goods which are or embody copies of copyrighted material, made without the consent of the holder of the copyright or neighboring rights, or of a person duly authorized by the right holder,;
- 5) 'Counterfeit Trademark Goods' shall mean:
 - any goods, or packaging, including goods which may not bear a

- (2) Any mould or matrix which is specially designed or adapted for the manufacture of a counterfeit trade mark or

- (4) The applicant may provide a sample of goods suspected to be in violation intellectual property right, as well as the sample of original of the goods, photographs and a like.
- (5) The general applicant referred to in Article 3, paragraph 2, subparagraph 2 of this

Security

Article 8

Where the application has been granted an applicant may be required to provide security in the form provided for by the customs legislation in an amount equal to any costs that might be incurred with respect to keeping and safeguarding of goods, where the procedure was discontinued owing to an error or omission by the applicant, or where the goods in question were subsequently found not to infringe intellectual property rights.

Suspension of the Procedure

Article 9

- (1) Where a customs authority to which the decision referred to in Article 7 of this Regulation has been forwarded is satisfied that goods placed in any of the customs procedures correspond to the description of goods contained in such decision, it shall suspend the customs procedure and detain the goods, and if necessary, examine them and take samples.
- (2) The customs office shall immediately inform the Customs Administration Headquarters, importer, declarant and the Right Holder about the suspension.
- (3) The Right Holder shall, within 15 days of the day the information referred to in paragraph 2 of this Article was received, notify the customs authority on any proceedings initiated before the competent court or any temporary measure granted.
- (4) Customs authority may, upon the request of the Right Holder, extend the period referred to in paragraph 3 of this Article for another 15 days.
- (5) The Right Holder shall, at his request, notified of the name and address of the declarant and, if known, of those of the consignee, consignor, importer or exporter and of the manufacturer of the Infringing Goods, and of the quantity of the goods in question and any additional information relating to the goods placed in the procedure that has been suspended.
- (6) The Right Holder, importer, exporter, declarant and the owner of the goods shall have the right to identify the goods in any appropriate manner, including the right to inspect the goods, provided that such inspection is done in the customs premises and under customs' supervision.
- (7) The

Article 10

- (1) Where the customs authority was informed within the time limits referred to in Article 9 of this Regulation that proceedings before the competent court have been initiated, and that the provisional measure has been ordered prolonging the suspension of the release of the goods, the customs authority shall act in accordance with such order. The goods detained in accordance with the provisional measure shall be stored pursuant to the customs legislation.
- (2) Where Right Holder does not inform the customs authority within the time limits referred to in Article 9 of this Regulation that proceedings before the competent court have been initiated, or that proceedings have been initiated but the provisional measure has not been granted, the customs authority shall resume the customs procedure, and after the procedure is completed, release the goods.
- (3) The Right Holder shall notify the customs authority when the procedure before the competent court is completed and a final and enforceable decision issued.

suspension when the above conditions are met

(1)

Provision Of Information
Article 12

Where the customs procedure was suspended pursuant to Article 8, paragraph 1 or Article 11 paragraph 1 of this Regulation, the customs authority may require the Right Holder to provide, promptly and without payment, any information or assistance, including technical expertise, equipment and facilities for the purpose of determining the infringement of intellectual property right.

IV. LIABILITY

Compensation of Damages

Article 13

- (1) The customs authority shall not be liable to the importer or the owner of the goods for any damages resulting from withholding the release of the goods pursuant to Article 5, paragraph 1.

Ex Officio Destruction

Article 15

- (1) The customs authority shall be authorized to confiscate and order destruction of detained goods or to order them disposed outside of normal channels of commerce ex-officio and without a court order, where:
 - 1) There are grounds to suspect that the goods are Infringing Goods and;
 - 2) The importer, exporter, declarant and/or owner of the goods has been notified of the suspension pursuant Article 11, paragraph 2 of this Regulation, and did not oppose the confiscation or destruction of such goods within the time limits referred to in Article 11, paragraph 3 of this Regulation.
- (2) The customs authority shall be authorized to act in accordance with paragraph 1 of this Article if after reasonable efforts by the customs authority the importer, declarant, exporter and/or owner of the goods has not been reachable to the custom authority.

Taking of Samples

Article 16

If the destruction has been authorized by a court order or by the customs authority, Right Holders shall have the opportunity prior to the destruction of goods to take samples, insofar as and to the extent that such samples are needed as evidence in pending or future legal actions against third parties involved in infringing intellectual property rights.

VI. FINAL PROVISION

Coming Into Force

Article 17

This Regulation shall come into force on the eighth day after its publication in the Official Gazette of the Republic of Monterrey and shall be effective as of July 1, 2005.