

**CIRCULAR**

**PROVIDING GUIDELINES ON IMPLEMENTATION OF MEASURES FOR BORDER  
CONTROL OF INDUSTRIAL PROPERTY RIGHTS IN IMPORT OR EXPORT GOODS**

*Pursuant to the Law on Customs dated 29 June 2001;*

*Pursuant to the Ordinance on Dealing with Administrative Offences dated 2 July 2002;*

*Pursuant to Decree No. 77-2003-ND-CP of the Government dated 1 July 2003 on duties, powers and organizational structure of the Ministry of Finance;*

*Pursuant to Decree No. 54-2003-ND-CP of the Government dated 19 May 2003 as amended by Decree No. 28-2004-ND-CP of the Government dated 16 January 2004 on functions, duties, powers and organizational structure of the Ministry of Science & Technology;*

*Pursuant to article 14 of Decree No. 101-2001-ND-CP of the Government dated 31 December 2001 on customs procedures, customs inspection and control;*

*Pursuant to article 64.6 of Decree No. 63-CP of the Government dated 24 October 1996 as amended by Decree No. 06-2001-ND-CP of the Government dated 1 February 2001 providing detailed regulations on industrial property;*

*The Ministry of Finance and the Ministry of Science & Technology hereby provide the following guidelines on implementation of measures for border control of industrial property rights in import or export goods:*

**Section I. GENERAL PROVISIONS**

**I. INTERPRETATION OF TERMS:**

The following terms in this Circular shall be construed as follows:

1.1 *Object of industrial property* means an invention, utility solution, industrial design, design

of arrangement of a semi-conducting integrated circuit, trademark, appellation of origin of goods or other object of industrial property which is protected by the law of Vietnam.

1.2 *Certificate of protection* means a Patent to an invention; a Certificate of exclusive right to

a utility solution; a Certificate of exclusive right to an industrial design (a Certificate for an industrial design issued pursuant to the 1989 Ordinance on Protection of Industrial Designs); a Certificate of registration of design of arrangement of a semi-conducting integrated circuit; a Certificate of registration of trademark; and a Certificate of right to use an appellation of origin of goods.

1.3 *Document proving industrial property ownership* means a Decision recognizing a well-known trademark, a Decision agreeing to protection of a registered trademark pursuant to the Madrid Agreement, and other types of documents certifying rights to objects of industrial property pursuant to the law on industrial property.

1.4 *Owner of industrial property rights* means an "Owner of a Certificate of protection", Owner of industrial property rights pursuant to a document proving industrial property ownership, and "Legal assignee of industrial property rights".

1.5 *Measures for border control of industrial property* means measures for checking whether goods have a counterfeit trademark and if so detecting same; temporary suspension of customs clearance procedures for goods where there is an indication that such goods infringe industrial property rights; measures for checking and confirming the legal status of industrial property rights in goods for which customs clearance procedures have been temporarily suspended; and measures for dealing with goods for which customs clearance procedures were temporarily suspended and which infringe industrial property rights and for dealing with the related parties in accordance with the provisions in this Circular.

1.6 *Goods which infringe industrial property rights* means import or export goods with a factor in breach of the law on industrial property.

1.7 *Goods with a counterfeit trademark* means import or export goods, including packaging, labels and stickers carrying a trademark which overlaps with or which is fundamentally indistinguishable from a protected trademark for goods of the same type without permission from the owner of the trademark. *Goods with a counterfeit trademark* are a special example of goods which infringe industrial property rights to a trademark.

1.8 *Applicant* means any person lodging a request for a check and detection of goods with a counterfeit trademark, or any person lodging a request for temporary suspension of customs clearance procedures in respect of import or export goods suspected of infringing industrial property rights.

1.9 *Application* means both an application requesting a check and detection of goods with a counterfeit trademark, and an application requesting temporary suspension of customs clearance procedures in respect of import or export goods suspected of infringing industrial property rights.

1.10 *Owner of the consignment of goods* means an importer of goods, an exporter of goods, and the owner of a consignment of goods.

1.11 *Services organization representing an owner of industrial property rights* means an organization which satisfies all the conditions to conduct the business of providing services representing an owner of industrial property rights in accordance with the law on industrial property.

## **2. Applicable entities:**

2.1 This Circular shall apply to all import goods and export goods, except for the cases stipulated in clause 2.2 below.

2.2 This Circular shall not apply to goods imported or exported other than for business purposes, including:

(a) Humanitarian aid goods;

(b) Goods in transit;

(c) Goods temporarily imported for re-export, and goods temporarily exported for re-import servicing work or living conditions of Vietnamese organizations and individuals or foreign organizations and individuals within the criteria for diplomatic immunity;

(d) Goods being gifts or goods being moved within the criteria for duty-free, and personal luggage within the criteria stipulated by regulations of the Government.

## **Section 2 REQUEST FOR APPLICATION OF MEASURES FOR BORDER CONTROL OF INDUSTRIAL PROPERTY RIGHTS**

### **3. Right to lodge an Application requesting application of measures for border control of industrial property rights:**

3.1 An owner of industrial property rights shall have the right to lodge an Application requesting the customs office to apply measures for border control of industrial property rights.

3.2 Where an owner of industrial property rights is a licensee, the right stipulated in clause

3.1 above shall only arise when the licensor has not exercised its right to lodge an Application within a period of three months as from the date the licensee suggests that an Application be lodged, and if the import or export of the goods by a third party will cause loss to the licensee.

3.3 The right to lodge an Application shall be proven by the following documents:

(a) Copy Certificate of protection or other document proving that the industrial property right is currently protected in Vietnam;

(b) Copy Certificate of registration of licence contract relating to the object of industrial property and within the period of effectiveness or other document proving that the applicant is the licensee and that the licensor has not exercised his right to lodge an application as stipulated in clause 3.2 of this Circular.

3.4 Any person who has the right to lodge an Application requesting the customs office to apply measures for border control of industrial property rights shall lodge an Application in accordance with the following provisions:

(a) A Vietnamese individual, legal entity or other subject and a foreign individual residing in Vietnam may directly lodge an Application or may authorize a services organization representing the owner of industrial property rights to lodge the Application;

(b) A foreign legal entity with a representative office in Vietnam, or a foreign individual or foreign legal entity with a production and business establishment in Vietnam may authorize its representative office, or its production and business establishment in Vietnam, or a services organization representing the owner of industrial property rights to lodge the Application;

A foreign individual not resident in Vietnam and who does not have a production and business establishment in Vietnam, or a foreign legal entity which does not have a representative office in Vietnam may only authorize a services organization representing the owner of industrial property rights to lodge the Application.

### **4. Conditions for a request for application of measures for border control of industrial property rights:**

4.1 A request for a check of whether goods have a counterfeit trademark and if so for detection of same may be made when the owner of industrial property rights in the trademark does not have detailed information about the specific consignment of import or export goods suspected of having a counterfeit trademark but has detailed information permitting detection of goods with a counterfeit trademark, including:

- (a) A detailed description of the goods with the counterfeit trademark, a photo of the genuine goods and a photo of the goods with the counterfeit trademark, and the points distinguishing the genuine goods from the goods with the counterfeit trademark;
- (b) A list of legal importers and exporters; a list of people suspected to have the capability to import or export goods with a counterfeit trademark; the sources of goods;
- (c) Methods of import and export; packaging methods; selling price of the genuine goods and selling price of the goods with a counterfeit trademark;
- (d) The country from which the goods are usually imported or to which the goods are usually exported, and other information relating to the import or export of the goods with a counterfeit trademark.

4.2 A request for temporary suspension of customs clearance procedures shall be made for a specific consignment of import or export goods suspected of infringing industrial property rights when the owner of the industrial property rights has information permitting confirmation of the consignment of import or export goods, including:

- (a) The object of industrial property which is suspected to be infringed;
- (b) Name and address of the importer or exporter of goods;
- (c) Information about the proposed date and location for conducting customs clearance procedures;
- (d) A detailed description or a photo of the goods suspected of infringing industrial property rights.

4.3 An owner of industrial property rights making a request for application of measures for border control of industrial property rights must satisfy the conditions on guaranteeing payment of expenses and compensation for damages arising as the result of the temporary suspension of customs clearance procedures at the request of such owner if the goods the subject of such request are confirmed as not infringing industrial property rights.

The above-mentioned guarantee of discharge of financial obligations shall be:

- (a) Receipt for payment of a security sum into the temporary custody account of the customs office at the State Treasury in an amount equal to twenty (20) per cent of the value of the consignment of goods as stated in the contract or in a minimum amount of twenty (20) million dong (if the value of the consignment suspected of infringing industrial property rights is unknown); or
- (b) Letter of guarantee from a credit institution or other organization authorized to conduct banking operations guaranteeing the undertaking to pay to the owner of the consignment all expenses and damages arising as the result of the temporary suspension of customs clearance procedures if the subject goods are confirmed as not infringing industrial property rights.

## **5. Time-limit [for application], and scope of a request for application of measures for border control of industrial property rights:**

5.1 An owner of industrial property rights shall have the right to request the customs office to apply measures for lodging the Application. These time-limits may be extended by a further one year in the case of goods with a counterfeit trademark and a further two months in the case of goods suspected of infringing industrial property rights, but not beyond the duration of protection of the relevant object of industrial property, and the applicant must pay fees for extension as stipulated by regulations.

5.2 An owner of industrial property rights shall have the right to request a customs office to apply measures for border control of industrial property rights within the scope of all bordergates determined to be within the geographical area of management of one or more Customs Divisions [and/or] municipal or provincial Customs Departments

**6. Application requesting application of measures for border control of industrial property rights:**

6.1 An application requesting a check of whether goods have a counterfeit trademark and if so detection of same, shall comprise the following documents:

- (a) Application in the Form in Appendix 1 to this Circular;
- (b) Document proving the right to lodge the Application as stipulated in clause 3 of this Circular;
- (c) Power of attorney (if the Application is lodged by a services organization representing the owner of industrial property rights or by another representative pursuant to clause 3.4 of this Circular);
- (d) Information or opinion from the body administering industrial property rights<sup>1</sup> in the case of initial evidence (if any) permitting the customs office to confirm whether the goods have a counterfeit trademark pursuant to clause 4.1 of this Circular.

6.2 An application requesting temporary suspension of customs clearance procedures for import or export goods suspected of infringing industrial property rights, shall comprise the following documents:

- (a) Application requesting temporary suspension of customs clearance procedures in the Form in Appendix 2 to this Circular;
- (b) Power of attorney (if the Application is lodged by a services organization representing the owner of industrial property rights or by another representative pursuant to clause 3.4 of this Circular);
- (c) Document proving the right to lodge the Application as stipulated in clause 3 of this Circular;
- (d) Initial evidence about the import or export goods suspected of infringing industrial property rights pursuant to clause 4.2 of this Circular;
- (dd) Letter guaranteeing discharge of financial obligations as stipulated in clause 4.3 of this Circular (if any).

6.3 If information about goods with a counterfeit trademark has already been recognized at the customs office, then the applicant need not lodge the documents prescribed in sub-clauses (b) and (c) of clause 6.2 on condition that the serial number of the Application requesting a check of whether goods have a counterfeit trademark and if so detecting same, is specified.

**7. Jurisdiction to receive Applications requesting application of measures for border control of industrial property rights:**

7.1 A Customs Division shall have jurisdiction to receive Applications if the scope of the request for application of measures for control is bordergates within the scope of management of such Customs Division.

7.2 A municipal or provincial Customs Department shall have jurisdiction to receive Applications if the scope of the request for application of measures for control is bordergates within the scope of management of such municipal or provincial Customs Department.

7.3 The General Department of Customs shall have jurisdiction to receive Applications if the scope of the request for application of measures for control is bordergates within the scope of management of two or more municipal or provincial Customs Departments.

### **8. Dealing with Applications:**

8.1 Within a period of thirty (30) days from the date of receipt of an Application requesting a check of whether goods have a counterfeit trademark and if so detection of same, or within twenty-four (24) working hours of receipt of an Application requesting temporary suspension of customs clearance procedures, the customs office shall be responsible to consider the Application as follows:

(a) The head of the customs office receiving the Application shall issue a notice accepting the Application and recognizing the information in the Application, if the Application does not belong to the cases stipulated in sub-clauses (b) and (c) of this clause.

(b) The head of the customs office receiving the Application shall issue to the applicant a notice of deficiencies in the Application and shall request the applicant to amend same within a period of thirty (30) days from the receipt of such notice in the case of an Application requesting a check of whether goods have a counterfeit trademark, or within three days in the case of an Application requesting temporary suspension of customs clearance procedures, if the Application falls within the following cases:

(i) The application file does not contain all the documents prescribed in clause 6 of this Circular;

(ii) The Application was not prepared on the prescribed Form or does not contain all the information required;

(iii) The Application was not lodged in accordance with clause 3.4 of this Circular;

(iv) The Application has insufficient detailed information for the customs office to be able to detect a counterfeit trademark or goods suspected of infringing industrial property rights as stipulated in clauses 4.1 or 4.2 of this Circular.

(c) The head of the customs office receiving the Application shall issue a notice refusing to accept the Application in the following cases:

(i) The customs office receiving the Application does not have jurisdiction pursuant to clause 7 of this Circular;

(ii) There are grounds for affirming that the applicant does not have the right to lodge an Application as stipulated in clauses 3.1 and 3.2 of this Circular; or

(iii) The Application contains deficiencies which, despite a request for amendment, have not been amended by the applicant.

8.2 On request by an owner of industrial property rights, any customs office which has already accepted an Application shall be responsible to additionally recognize all changes relevant to information already recognized on condition that the person making the request pays fees stipulated by the regulations.

### **Section 3. APPLICATION OF MEASURES FOR BORDER CONTROL OF INDUSTRIAL PROPERTY RIGHTS**

#### **9. Grounds for, period for, and entities subject to application of measures for border control of industrial property rights:**

A customs office shall apply the measures prescribed in this Section on the following bases:

9.1 An application requesting a check and detection of goods with a counterfeit trademark which has already been recognized pursuant to clause 8 of this Circular, during a period for one year calculated from the date of lodging the Application;

9.2 An application requesting temporary suspension of customs clearance procedures for a specific consignment of import or export goods which has the special characteristics set out in the Application, during a period of three months calculated from the date of lodging the Application.

**10. Responsibility to carry out the measures for border control of industrial property rights:**

10.1 The General Department of Customs and the Customs Department which has accepted an Application shall provide to all Customs Divisions within the scope of the request in the Application all information which has already been recognized about goods with a counterfeit trademark and goods with indications of infringing industrial property rights, and shall give directions on organizing application of the measures prescribed in this Section

10.2 The Customs Division which has accepted an Application or received information about an Application from higher level bodies shall organize a check and detection of goods with a counterfeit trademark or of goods with indications of infringing industrial property rights, on the basis of information provided and shall then apply measures for border control of industrial property rights in accordance with the procedures prescribed in this Section.

**11. Check and detection, and temporary suspension of customs clearance procedures for goods with a counterfeit trademark and goods suspected of infringing industrial property rights:**

11.1 Based on the information which has already been recognized [and as] set out in an Application requesting application of measures for border control of industrial property rights and which Application has been accepted, the Customs Division shall be responsible to carry out a check and detection of goods suspected of having a counterfeit trademark and of infringing industrial property rights.

11.2 On discovery of a consignment of goods suspected of having a counterfeit trademark or of infringing industrial property rights, the director of the Customs Division shall have the right to temporarily suspend customs clearance procedures and shall immediately provide written notice to the Applicant to lodge a letter guaranteeing discharge of financial obligations as prescribed in clause 4.3 of this Circular (if not yet lodged) within a time-limit of three working days from the date of issuance of the notice.

(a) If the applicant fails to comply with the above request, the Customs Division shall continue to conduct customs clearance procedures for such consignment of goods;

(b) If the applicant complies with the above request, the director of the Customs Division shall issue a decision temporarily suspending customs clearance procedures for such consignment of goods, and send the decision to the parties concerned.

A decision temporarily suspending customs clearance procedures must specify the effected consignment of goods; and the name, address and contact details (telephone number and fax number) of the owner of the consignment of goods and of the applicant; the owner of industrial property rights; and the reason for and duration of the temporary suspension of customs clearance procedures.

**12. Duration of temporary suspension of customs clearance procedures:**

12.1 The duration of temporary suspension of customs clearance procedures shall be ten (10) days as from the date of issuance of the temporary suspension decision.

The director of the Customs Division may issue a decision extending the duration of temporary suspension of customs clearance procedures for an additional maximum ten

(10) days if within the [original] duration of temporary suspension the applicant requests an extension and pays an additional security sum pursuant to clause 4.3(a) of this Circular. If a customs declaration has already been registered and accepted but thereafter customs clearance procedures are temporarily suspended to enable the customs office to inspect and verify the legal status of industrial property rights, then the time-limit for payment of duty (if any) shall be calculated from the date of issuance of the decision to continue to conduct customs clearance procedures for such consignment of goods.

12.2 The time-limit to enable the customs office to confirm the legal status of industrial property rights in goods for which customs clearance procedures have been temporarily suspended pursuant to clause 14.5 of this Circular shall not be included when calculating the duration stipulated in clause 12.1 above.

### **13. Inspection and collation of evidence that goods infringe industrial property rights:**

13.1 During the period of temporary suspension of customs clearance procedures, [and] at the request of the applicant or owner of the consignment of goods, the customs office shall arrange for all parties to inspect the consignment of goods for which customs clearance procedures have been temporarily suspended in order to collate evidence and information about such consignment of goods.

13.2 Evidence about goods for which customs clearance procedures have been temporarily suspended may be collated in the form of a detailed descriptive statement of special signs, photos of the goods, and samples of the goods or goods packaging in necessary and appropriate cases. The Customs Division must seal up any evidence which is to be sent to an agency competent to provide an evaluation [and/or] to resolve the dispute (in accordance with the request of the parties).

### **14. Confirmation of legal status of industrial property rights in goods for which customs clearance procedures have been temporarily suspended:**

14.1 *Confirmation of legal status of industrial property rights in respect of goods for which customs clearance procedures have been temporarily suspended* means considering and concluding whether or not such goods are goods which infringe industrial property rights, and includes confirmation of the following about the goods:

(a) Do the goods contain an illegal factor, and

(b) Has the owner of industrial property rights, a person authorized by the owner of industrial property rights or a person with a previous use right already put the goods onto the Vietnamese market or an overseas market?

14.2 A customs office shall carry out the procedures for confirmation of legal status of industrial property rights in respect of goods for which customs clearance procedures have been temporarily suspended, if

(a) During the period of temporary suspension of customs clearance procedures, the applicant lodges with the Customs Division a [further] Application requesting that the conduct infringing industrial property rights be dealt with and also enclosing evidence, argument and data or the written conclusion on evaluation of industrial property rights from the body administering industrial property rights and affirming that the goods for



which customs clearance procedures were temporarily suspended are goods which infringe industrial property rights;

(b) Within a period of thirty (30) days from the date of issuance of a decision to continue to conduct customs clearance procedures for a consignment of goods pursuant to clause 15.1(e) of this Circular, the applicant lodges with the Customs Division a [further] Application requesting that the conduct infringing industrial property rights be dealt with and also enclosing evidence, argument and data or the written conclusion on evaluation of industrial property rights from the body administering industrial property rights and affirming that the goods for which customs clearance procedures were temporarily suspended are goods which infringe industrial property rights.

14.3 Confirmation of whether goods contain an illegal factor must comply with the law on industrial property.

The basis for confirming an illegal factor shall be evidence, argument and data provided by the applicant and by the owner of the consignment of goods.

The basis for confirming whether the owner of industrial property rights, a person authorized by the owner of industrial property rights or a person with a previous use right already put the goods for which customs clearance procedures were temporarily suspended onto the market shall be evidence, argument and data proving such fact and provided by the owner of the consignment of goods.

14.4 If the Customs Division is unable to itself confirm the legal status of industrial property rights in the goods for which customs clearance procedures were temporarily suspended, based on the evidence, argument and data provided, then the Customs Division shall have the right to require the applicant to send a written request for an evaluation of industrial property rights from the State administrative body for industrial property rights in order to have an opinion and conclusion.

The evidence, argument and data which the Customs Division uses to reach a conclusion about the legal status of [industrial property rights in] the goods for which customs clearance procedures were temporarily suspended, may be provided by any one of the parties but must also be provided to the other parties who may give their opinion thereon.

14.5 The time-limit for confirmation of the legal status of industrial property rights in respect of the goods for which customs clearance procedures were temporarily suspended, shall be ten (10) days calculated from the date of lodging the Application requesting that the conduct infringing industrial property rights be dealt with pursuant to clause 14.2 of this Circular. Any period reserved for the related parties to supplement evidence, argument and data or the time-limit for seeking an evaluation from the Department of Industrial Property or local Department of Science & Technology shall not be included in the above- mentioned time-limit.

**15. Continuing to conduct customs clearance procedures for a consignment of goods for which customs clearance procedures were temporarily suspended, and dealing with the related parties:**

15.1 The director of the Customs Division shall issue a decision to continue customs clearance procedures for a consignment of goods for which customs clearance procedures were temporarily suspended, in the following cases:

(a) If on expiry of the period for temporary suspension of customs clearance procedures as fixed in the decision on temporary suspension, the Customs Division has not received one of the following documents:

(i) A [further] Application from the applicant requesting that the conduct infringing industrial property rights be dealt with and enclosing evidence, argument and data or the written conclusion on evaluation of industrial property rights from the body administering industrial property rights so that there are grounds for confirming the legal status of industrial property rights in the goods for which customs clearance procedures were temporarily suspended; or

(ii) A document from a competent State body or court confirming it has received an application requesting resolution of the dispute about infringement of industrial property rights relating to the consignment of goods for which customs clearance procedures were temporarily suspended.

(b) When there is a conclusion on confirmation of legal status of industrial property rights affirming that the consignment of goods for which customs clearance procedures were temporarily suspended does not infringe industrial property rights;

(c) When the Customs Division receives a decision from any competent body resolving the dispute about industrial property rights and affirming that the consignment of goods for which customs clearance procedures were temporarily suspended does not infringe industrial property rights;

(d) When the decision temporarily suspending customs clearance procedures is itself stayed or withdrawn pursuant to a decision resolving a complaint;

(dd) When the applicant withdraws the Application requesting temporary suspension of customs clearance procedures;

(e) When the goods for which customs clearance procedures were temporarily suspended are goods suspected of infringing industrial property rights in an invention, utility solution, industrial design, design of arrangement of a semi-conducting integrated circuit or business secret and the owner of the consignment of goods requests continuation of customs clearance procedures (on condition that a sample of the goods is retained to provide a basis for dealing with them afterwards) and at the same time pays a security sum into the temporary custody account of the customs office at the State Treasury in an amount equal to twenty (20) per cent of the value of the consignment of goods as stated in the contract.

15.2 The customs office shall not be liable for any temporary suspension at the request of the applicant and shall take measures to deal with the related parties as follows:

(a) In the cases prescribed in clauses 15.1(a) to 15.1(dd) inclusive, the customs office shall carry out the following work:

(i) Issue a decision compelling the applicant to pay all expenses incurred by the owner of the consignment of goods and arising from the improper temporary suspension of customs clearance procedures. Expenses arising shall include storage, loading and unloading, and preservation of the goods. Damages arising from temporary suspension shall be agreed by the two parties or shall be fixed in accordance with civil litigation procedures;

(ii) Refund any security sum paid into the temporary custody account of the customs office or return the guarantee from a credit institution to the applicant after the applicant has discharged the obligation to pay the expenses and damages arising pursuant to a decision of the customs office or a competent body resolving the dispute or complaint about industrial property rights relating to the consignment of goods (if any);

(iii) Prepare minutes of administrative breach and request the competent body to issue a decision fining the applicant for exercising industrial property rights for the purpose of

unfair competition according to provisions in guidelines on dealing with administrative offences in the industrial property sector.

(b) In the case prescribed in clauses 15.1(e) above, the customs office shall take the following measures to deal with the issue:

(i) Refund to the owner of the consignment of goods any security sum paid into the temporary custody account of the customs office, if

- On the expiry of thirty (30) working days after the date of the decision to continue to conduct customs clearance procedures the applicant failed to lodge with the customs office a [further] Application requesting that conduct infringing industrial property rights be dealt with and enclosing evidence, argument and data or the written conclusion on evaluation of industrial property rights from the body administering industrial property rights and affirming that the goods for which customs clearance procedures were temporarily suspended are goods which infringe industrial property, or failed to lodge a court document confirming that the court has received a request to resolve the dispute about infringement of industrial property rights relating to such consignment of goods;

- The goods for which customs clearance procedures were temporarily suspended are not goods which infringe industrial property rights;

(ii) Issue a decision imposing a penalty on the owner of the consignment of goods for an administrative breach pursuant to the provisions in clause 16.1 and 17.2 of Section 3 of this Circular and refunding the security sum and returning the guarantee from the credit institution to the applicant if the conclusion is that the goods for which customs clearance procedures were temporarily suspended are goods which infringe industrial property rights.

**16. Dealing with the related parties where there is confirmation that the goods for which customs clearance procedures were temporarily suspended are goods which infringe industrial property rights:**

In a case where the Customs Division concludes that the goods for which customs clearance procedures were temporarily suspended are goods which infringe industrial property rights, the director of the Customs Division shall transfer the file together with his recommendation on resolution to the municipal or provincial Customs Department in order for the director of the Customs Department to issue a decision:

16.1 Imposing a penalty for an administrative offence on the owner of the consignment of goods in the amount prescribed in guidelines on dealing with administrative offences in the industrial property sector;

16.2 Refunding the security sum paid into the temporary custody account of the customs office or returning the guarantee from the credit institution to the applicant.

**17. Dealing with import or export goods which infringe industrial property rights:**

17.1 The application of measures dealing with goods which infringe industrial property rights must comply with the following principles:

(a) Goods which infringe industrial property rights shall be dealt with in accordance with the Ordinance on Dealing with Administrative Offences dated 2 July 2002, Decree No. 134-2003-ND-CP of the Government dated 14 November 2003 providing detailed regulations for implementation of the Ordinance on Dealing with Administrative Offences, and the Decree and guidelines on dealing with administrative offences in the industrial property sector;

(b) Measures dealing with import or export goods which infringe industrial property rights must ensure prompt cessation of the conduct infringing industrial property rights and prevention of ability to commit a further breach while at the same time ensuring the lawful rights and interests of the owner of the relevant industrial property rights;

(c) Compulsory measures to eliminate the illegal factor may only be applied to goods from which such illegal factor can be detached, namely goods with an illegal factor which is removable such as a label, sticker, packaging or removable section of the goods;

(d) Compulsory measures to re-export goods may only be applied to goods with a counterfeit trademark if such trademark is removable;

(dd) The measure of confiscation of goods may only be applied to goods which infringe industrial property rights if it is impossible to detach the illegal factor from the goods;

(e) The measure of distribution of confiscated goods to entities for use for non-business purposes (humanitarian organizations, social welfare organizations, research establishments, public educational institutions and so forth) may be applied unless the owner of industrial property rights has a reasonable objection;

(g) The measure of destruction of confiscated goods shall be applied if the goods have no use value or residual use value; to any label, sticker or packaging constituting an illegal factor; or to goods which fail to satisfy the conditions in order to be dealt with by the measures mentioned above.

17.2 Authority, procedures and forms of dealing with goods for which customs clearance procedures were temporarily suspended being goods which infringe industrial property rights must comply with the Ordinance on Dealing with Administrative Offences dated 2 July 2002, Decree No. 134-2003-ND-CP of the Government dated 14 November 2003 providing detailed regulations for implementation of the Ordinance on Dealing with Administrative Offences, and the Decree and guidelines on dealing with administrative offences in the industrial property sector.

## **Section 4 IMPLEMENTING PROVISIONS**

### **18. Complaints:**

18.1 The owner of the consignment of goods and the applicant shall have the right to lodge a complaint about any decision [and/or] conclusion of the customs office regarding application of measures for border control of industrial property rights.

18.2 The complainant and the body competent to resolve the complaint must correctly carry out the procedures and order for complaints and for resolution of complaints in accordance with the *Law on Complaints and Denunciations*.

### **19. Responsibilities of the owner of industrial property rights:**

19.1 The owner of industrial property rights shall be responsible to take the initiative in supplying information relevant to goods which infringe industrial property rights to the customs office, and to co-operate with the Department of Industrial Property and the General Department of Customs in fostering professional expertise of customs staff aimed at raising their knowledge and at their taking the initiative in checking whether goods infringe industrial property rights at bordergates and at preventing such infringements.

19.2 The owner of industrial property rights may assist the customs office by paying the expenses of destruction of goods which infringe industrial property rights if such expenses are not recoverable from the owner of the consignment of goods.

### **20. Responsibilities of competent bodies:**

20.1 The General Department of Customs under the Ministry of Finance shall be responsible to organize implementation of measures for border control of industrial property rights pursuant to the provisions in this Circular.

20.2 The Department of Industrial Property under the Ministry of Science & Technology shall be responsible to provide to the General Department of Customs information about or relating to objects of industrial property which are currently protected by the law of Vietnam, and to co-ordinate with the General Department of Customs to provide professional training on industrial property rights to all customs offices directly implementing measures for border control of industrial property rights.

20.3 The Department of Industrial Property and local bodies administering industrial property shall be responsible to conduct evaluations of industrial property rights at the request of customs offices and related parties in accordance with the authority and procedures stipulated in the law on industrial property.

**21. Effectiveness:**

This Circular shall be of full force and effect fifteen days after the date of its publication in the Official Gazette. If any problems arise during implementation of this Circular, they should be reported to the Ministry of Finance and to the Ministry of Science & Technology for resolution.

**FOR THE MINISTER OF  
FINANCE  
DEPUTY MINISTER**

**FOR THE MINISTER OF SCIENCE &  
TECHNOLOGY  
DEPUTY MINISTER**

**Truong Chi Trung**

**Bui Manh Hai**