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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

CUSTOMS NOTIFICATION

BY virtue of the powers vested in me under Section 101 of the Customs Ordinance (Chapter 235) of No. 83 of 1988, as amended by the Customs (Amendment) Act, No. 83 of 1988 and by Section 206 of Intellectual Property Act, No. 36 of 2003, I, Mahinda Rajapaksa, Minister of Finance and Planning, do by this order declare under mentioned regulations.

MAHINDA RAJAPAKSA,
Minister of Finance and Planning.

Ministry of Finance and Planning,
Colombo 01,
03rd October, 2007.

Section 101

REGULATIONS

ARTICLE 1

The owner of any registered trade mark or holder of copy right or any other Intellectual Property rights may make an application to the Director General of Customs on form specified in and published by the Director General of Customs by Notification in the Gazette (Schedule 1 of this Notification) requesting the Customs to suspend clearance of imported goods that are suspected of being counterfeit or pirated.

ARTICLE 2

The owner of any registered trade mark or holder of copy right or any other Intellectual Property rights may make an application to the Director General of Customs on a form specified in and published by the Director General of Customs by Notification in the Gazette (Schedule 2 to this notification) requesting the Customs to suspend clearance of the exportation of goods that are suspected of being counterfeit or pirated.

ARTICLE 3

Conditions governing the lodging of an application

Any application made under Article 1 or Article 2 shall be accompanied by :

- (a) adequate evidence to prove the ownership of the registered trade mark or copyright or any other right to the goods imported or to be exported Intellectual Property (IP).
- (b) adequate [Section 125B(2)] evidence that such Intellectual Property right has been violated.
- (c) Description of the goods.
 - (i) Name and address of the Importer or Exporter.
 - (ii) Country/countries of origin of the suspect goods.
 - (iii) Country/countries of manufacture of the allegedly infringing goods.
 - (iv) name of business address of foreign business entity involved in the manufacture and/or distribution of suspect articles.
 - (v) the mode of transportation and the identity of the allegedly infringing goods.
 - (vi) The port(s) where it is anticipated the suspect articles will be presented to Sri Lanka Customs.
 - (vii) The anticipated date to presentation to the Sri Lanka Customs.
 - (viii) A sample article bearing the registered trade mark or copyright or two photographs of the trade mark of copyright no longer than 8 1/2" x 1", if available.
 - (ix) The place and identity of the manufacture of genuine goods, if available.
- (d) Proof of the payment of such sum as the Director General of Customs may in his discretion determine, being a sum as it adequate or appropriate.
- (e) The fees paid as described in (d) shall be utilized by the Court or Director General of Customs in order to compensate any importer, consignee, exporter or owner of the goods, for loss or damage resulting from the wrongful suspension of the import or export of the goods.

ARTICLE 4

The Director General shall within a reasonable time of the receipt of an application notify the applicant whether the application has been granted or rejected or reserved for further consideration.

If the application is granted immediately, it shall be notified to the applicant. *If an application is rejected*, the director General shall *state the grounds for rejecting such application*.

ARTICLE 5

Steps to be taken by Customs upon accepting an application.

- (a) Upon prima facie evidence of an infringement being established, by way of an application, the Director General of Customs shall suspend for clearance of goods referred to in the application. The detention shall remain in force initially for a period of fourteen (14) days and any extension thereof as decided by the Director General of Customs.

- (b) The Director General of Customs shall immediately inform the importer or exporter as a case may be and the applicant of the suspension the clearance of goods, and shall state the reasons for such suspension. The Director General of Customs shall also notify the importer or exporter of the name and address of the applicant.
- (c) On the order of the Court, the right holder shall be given an opportunity to have any goods detained by the Customs authorities, inspected in order to substantiate the claims of the right holder.
- (d) On an order of Court, the right holder, importer or exporter shall also have an opportunity to have any such goods inspected. The right holder, importer or exporter is entitled upon the payment of a fee nominated by the Director General of Customs to remove a reasonable quantity of samples for examination, testing and analysis in order to determine, whether the goods are pirated, counterfeit or otherwise infringe, an Intellectual Property right.

ARTICLE 6

If, within a period of fourteen working days after the applicant has been served notice of the suspension, the Director General of Customs has not been informed of the institution of proceedings in respect of the release of any goods suspended under Article (5), the goods shall be released, provided all other conditions for importation or exportation have been complied with.

ARTICLE 7

Any infringing goods shall be destroyed or disposed of by the Customs Authorities on the order of Court, at the expense of the importer or exporter as the case may be, who is guilty of the said infringement.

If, in pursuance of an application made under Article 3, the Director General of Customs has suspended the release of any good into free circulation, and a period of ten working days after the applicant has been served notice of the suspension, has expired without the grant of any provisional relief by a Court of competent, the goods shall be released provided all other conditions for importation or exportation have been complied with.

ARTICLE 8

On the order of the Court, the Director General of Customs shall compensate the importer, the exporter or the consignee for any harm arising out of the wrongful detention of goods, out of the deposit made with Director General of Customs by the applicant at the time of lodgment of the application.

ARTICLE 9

Acts on Customs on its own initiatives (Ex. Officio Action)

The Customs shall on its own initiative suspend the clearance of importation or exportation of goods in respect of which it has acquired prima facie evidence, that an intellectual property right has been, or may be infringed. The Officers, of Customs shall be exempted from liability only where such action are taken in good faith.

ARTICLE 10

Where the clearance or exportation of the goods has been suspended by the Customs on its own initiative, the Customs shall immediately inform the right holder of the place and date of the suspension of Customs Clearance. The Customs may seek any assistance or any information including technical expertise and facilities from the right holder, without any payment, for the purpose of determining whether the suspended goods are counterfeit, pirated or otherwise infringe an intellectual property right.

ARTICLE 11

Disposal of Counterfeit trade mark or pirated copyright goods

If Customs determine after holding an inquiry under the provisions of Customs Ordinance that the goods suspended are of counterfeit or pirated, the goods shall be disposed of in the following manner.

- (a) by destruction under official supervision of the customs, at the expense of the importer or exporter as the case may be, who is guilty of such infringement.
- (b) by such other manner as may be with the competence of the Customs, provided that such manner of disposal shall be outside normal channels of commerce and be without detriment to the owner of the trade mark or the copy right holder.

ARTICLE 12

Counterfeit trade mark or pirated goods of a non commercial nature contained in a traveler's personal baggage or imported in small consignment are excluded from the purview of these Regulations.

“Personal Baggage” mean the permissible quantities of articles and goods in-passenger baggage as the Director General of Customs, may from time to time determine.

“Goods in small consignments” means any goods that arrive as bone fide gift or commercial or trade samples received by an individual or registered company as determined by the Director General of Customs.

Schedule 1

**APPLICATION REQUESTING THE DIRECTOR GENERAL OF CUSTOMS TO SUSPEND CLEARANCE OF
GOODS WHICH ARE SUSPECTED OF BEING COUNTERFEIT OR PIRATED**

Information of the Complainant

Name in Full :
Name of the Company/Organization :
Address :
Telephone No. :
Fax No. :
E-Mail Address :
Description of the Product :
Trade mark name :
Registered Trade mark number :
Other Details :

Information of the Violator.

Name of the importer/Company :
Address of the Importer/Company :
Telephone No. (if know to the complainant) :
Fax No. (if know to the complainant) :

Name of Address of the Foreign Supplier/Manufacturer :
Description of the suspected infringing merchandise/commodity :
(Please describe the nature of violation)
Type of infringement :
Country of origin of the suspected infringing merchandise :
Other details :

Signature of the Complainant.

Date :

Schedule 2

APPLICATION REQUESTING THE DIRECTOR GENERAL OF CUSTOMS TO SUSPEND EXPORT OF GOODS WHICH
ARE SUSPECTED OF BEING COUNTERFEIT OR PIRATED

Information of the Complainant

Name in Full :
Name of the Company/Organization :
Address :
Telephone No. :
Fax No. :
E-Mail Address :
Description of the Product :
Trade mark name :
Registered Trade mark number :
Other Details :

Information of the Violator

Name of the importer/Company :
Address of the Importer/Company :
Telephone No. (if know to the complainant) :
Fax No. (if know to the complainant) :
Description of the suspected infringing merchandise/commodity :
(Please describe the nature of violation)
Type of infringement :
Other details :

Signature of the Complainant.

Date :

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