

**Customs Management Act, 2011**

**(Act 22 of 2011)**

**Customs Management (Border Measures) Regulations, 2013**

In exercise of the power conferred by section 270 of the Customs Management Act, the Minister of Finance hereby makes the following Regulations.

1. These Regulations may be cited as the Customs Management (Border Measures) Regulations, 2013 and shall be deemed to have come into operation on \_\_\_\_\_, 2013.

Citation

2. or the purposes of these Regulations, unless the context clearly indicates otherwise:

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Definition

**Counterfeit Trademark Goods** means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark of the rights holder validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the rights holder of the trademark in question under the laws of Seychelles;

**Court** means: means the Supreme Court of Seychelles;

**Infringing Goods** means: counterfeit trademark goods and pirated copyright goods, but excluding infringing goods of a non-commercial nature and intended for the importer's or consignee's own personal use contained in personal luggage or sent in small consignments;

**Intellectual property right** means the rights granted to the rights holder in respect of

- (a) copyright, under the Copyright Act;
- (b) trademarks, under the Trade Marks Decree;

**Pirated Copyright Goods** means: any goods which are copies made without the consent of the rights holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right of the rights holder under the laws of Seychelles;

**Rights holder means:** the natural person or legal entity which, according to the relevant law is to be regarded as the owner or rights holder of the particular intellectual property right, its successors in title, or its duly authorized exclusive licensee as well as an individual, a corporation or an association authorized by any of the afore-mentioned persons to protect its rights.

3. A rights holder may submit an application to Customs, in accordance with the procedures and under the conditions set out in this law, for the suspension of customs clearance of imported goods that are suspected of being infringing goods.

4. (1) Any application by a rights holder for initiating procedures for any infringements of any rights under these Regulations shall –  
(a) be in the prescribed form,  
(b) provide the prescribed information, and  
(c) be accompanied by a fee of SCR .....

Applications by  
Rights Holders

(2) Customs shall deal with an application within a reasonable period of time and shall allow the application if *prima facie* and satisfies the following criteria –

- (a) the intellectual property right which relates to the goods subsists, and
- (b) the applicant is the rights holder of that intellectual property right.

(3) Where Customs is not satisfied with an application due to lack of information provided, Customs shall notify the applicant and defer its decision pending submission of additional information by the applicant-within a reasonable time.

(4) Urgent applications in which immediate action is required and where sufficiently specific information concerning known shipments containing allegedly infringing goods is provided shall be assessed immediately, and notification to the rights holder shall be made as soon as possible.

(5) Unless the rights holder –

- (a) requested a shorter period; or
- (b) applied for action in cases of specific shipments,

the assistance shall be effective for a period of [number],

(6) Where an application is rejected Customs shall clearly state the reason for the rejection.

(7) Notwithstanding subsection 3 provided that Customs is satisfied that an applicant has made available adequate evidence for the adjudication of an application, an application may not be rejected on the grounds that the applicant has not provided all of the prescribed information.

(8) Customs may refuse to suspend clearance of goods unless the rights holder furnishes to Customs security in the manner and amount that Customs may reasonably require to indemnify itself against any liability that may be incurred pursuant to such suspension, and to cover any expenses that may be incurred in effecting the suspension.

Applications for  
intervention

(9) Customs shall inform all its offices immediately of the suspension with full particulars to enable them to act in terms thereof.

(10) The rights holder shall inform Customs when his intellectual property right ceases to be valid or if he ceases to be the owner of the right for any reason whatsoever, in which event the application or suspension shall lapse.

5. (1) Customs shall suspend clearance of the goods if satisfied that the goods to be imported are infringing goods covered by the grant of the application.

Suspension of clearance

(2) In order to determine whether the goods are infringing goods, Customs may consult with the applicant.

(3) Customs shall immediately inform –

- (a) provided their identity is known to Customs, the importer, exporter, consignee or the consignor; and
- (b) the applicant, of the suspension of the clearance of the goods and shall state the reasons for such suspension.

6. In the event that an applicant is not satisfied with the decision taken by Customs may appeal such decision in accordance with the procedure set out under the Revenue Administration Act, 2009.

Appeal under Revenue Administration Act

7 (1) Customs may, on its own initiative, suspend the clearance of goods –

(a) in respect of which it has acquired *prima facie* evidence that the goods are infringing goods; or

(b) that there are reasonable grounds to suspect that the goods are infringing goods.

Customs may suspend clearance of goods

(2) Where Customs suspends the clearance of goods in terms of subsection (1), the provisions of Sections 4 and 5 shall apply *mutatis mutandis*;

8 (1) Where Customs determines that goods are infringing goods, Customs may, upon application by the right holder, order that the goods be forfeited and –

- (a) be destroyed, or
- (b) disposed of in accordance with the procedures set out in Section 116 of the Customs Management Act, 2011.

Disposal of Infringing Goods

(2) In granting an order in terms of subsection (1), the Customs shall take the following into consideration:

- (a) disposal shall be outside the normal channels of commerce and in such a manner so as to minimize the risks of further infringements, and without detriment to the rights of the rights holder,
- (b) the rights holder's proposed manner of destruction or disposal,
- (c) the effect on the environment of the manner of destruction; and
- (d) in the case of counterfeit trademark goods, the re-exportation of the goods in an unaltered state, or subjecting them to a different customs procedure, other than in exceptional circumstances, shall not be permitted.

(3) In the event that –

(a) the right holder has provided adequate evidence to the satisfaction of Customs that the goods are infringing goods; and

(b) the importer, the exporter, the consignee, the consignor, the owner of the goods, or the declarant who has been served by Customs with a notice of suspension, has been informed about the possibility of confiscation and destruction or disposal outside the channels of commerce by default of the goods and does not oppose the measure within [twenty working days] after having been served the notice; or

(c) if after reasonable efforts by Customs the importer, exporter, consignee, consignor, the owner of the goods, or the declarant has not been identified,

Customs may, without a court order and with or without a the request of the rights holder, forfeit and destroy or dispose of the goods by placing them outside the channels of commerce, and the provisions of (1) shall apply *mutatis mutandis*.

(4) Where the applicant have been granted an extension of the time limit for taking legal actions, such extension shall automatically apply to the appeal procedure referred to in these Regulations.

Comment [S1]: Seychelles is in the process of reviewing and aligning the length of time granted for appeals in related legislations.

MADE, this ..... day of ..... 2013.

PIERRE LAPORTE  
MINISTER OF FINANCE, TRADE AND INVESTMENT