

OCTOBER 2009 Vietnam: Using the Customs recordal system

01 Oct 2009

Customs recordal is one of the legal measures that IP owners can employ for enforcement at the borders. The Customs Law provides that IP can be recorded with local Customs offices or the General Customs Department in Hanoi. Recordal is not compulsory, but is highly recommended for rights holders facing IP infringement in Vietnam. The relevant laws and regulations governing customs recordal are the Customs Law 2001, amended in 2005, Decree No 154/ND-CP dated December 15 2005, detailing the provisions of the Customs Law and the Regulations on Handling Requests for Border Control Measures Over Imported and Exported Goods promulgated by Decision no 916/QD-TCHQ dated March 31 2008.

The types of IP that can be recorded include copyright, patents and trade marks. An application must be filed with customs authorities to request the monitoring and detection of goods that infringe IP, accompanied by a detailed description of infringing goods and of features distinguishing genuine and infringing goods, certified copies of IP registration certificates, and other information, such as suspected sources of infringing goods, modes of export and import, packing methods, prices, as well as suspected exporters/importers or distributors of infringing goods.

Within thirty days of the receipt of all relevant documents, the authorities shall issue notification on acceptance of the application dossier. The recordal of IP is valid for one year from the date of filing of the application and is renewable many times within the IP protection term upon the request of the applicant.

There are generally two scenarios for customs enforcement proceedings if IP owners suspect that infringing goods are about to be exported or imported. IP owners may file a request to customs offices to temporarily suspend Customs procedures. In addition, the IP owner must provide security equal to 20% of the value of the suspected goods, or D20 million (\$1,100) if the value is unknown, to cover potential losses of the consignee or consignor or costs incurred by Customs for warehousing or storage of the infringing goods.

In the other scenario, if the Customs authorities suspect that imported or exported goods infringe IP, they will temporarily suspend Customs procedures and immediately notify the IP owner. The IP owner must then, within three working days of receiving the notice from Customs authorities, confirm the goods in question are infringing and file a request to detain the goods. The IP holder must also provide security, as described above, to the authorities in this situation. Within ten working days after temporarily suspending Customs procedures, the Customs authorities will decide: whether or not the goods infringe IP; whether to detain or destroy the goods; and whether or not to fine the infringer. The applicant can also file a law suit to seek damages from the infringer.



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