

## Border Control in Vietnam

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Tilleke & Gibbins has assisted a number of clients in successfully enforcing their intellectual property rights (IPRs) at border gates by employing border control measures. Below are detailed guidelines on border control measures in Vietnam.

### Legal Basis

The following legal documents provide the legal basis for customs recordal:

1. Intellectual Property Law No. 50/2005/QH11, dated 29 November 2005, as amended in 2009 (the “IP Law”).
2. Customs Law No. 29/2001/QH10 dated 29 June 2001, as amended and supplemented in 2005.
3. Decree No. 105/2006/ND-CP guiding the implementation of a number of provisions of the IP Law dated 22 September 2006, which was amended and supplemented by Decree No. 119/2010/ND-CP dated 30 December 2010.
4. Decree No. 154/2005/ND-CP dated 15 December 2005 guiding the implementation of a number of provisions of the Customs Law.
5. Joint Circular No. 129/2004/TTLT-BTC-BKHCHN guiding the application of border control measures for industrial property for export goods and import goods dated 29 December 2004.
6. Decision No. 916/QĐ-TCHQ dated 31 March 2008 promulgating regulations on receiving requests for controlling import-export goods in relation to intellectual property.
7. Circular 44/2011/TT-BTC dated 1 April 2011 guiding counterfeit suppression and IPR enforcement in the field of customs.

### Border Control

Border control not only demonstrates its preemptive effectiveness but also works well in the suppression of IPR infringement at Vietnam’s borders. In this regard, it has been gaining more attention from IPR holders over the past few years.

Border control includes (1) monitoring/supervision to detect goods suspected of infringing IPRs and (2) suspension of customs clearance of goods suspected of infringing IPRs.

## Customs Monitoring

Statutorily, customs monitoring covers all types of intellectual property. In practice, however, customs monitoring is often applicable to trademarks, geographical indications, and copyrights/neighboring rights.

To monitor the flow of infringing goods crossing Vietnam's borders, IPR holders must initiate customs recordal by filing a request with the General Department of Customs.

### Mandatory Documents:

The following documents must accompany the request for recordal:

- Documents attesting to the rights of the applicant/requester (certified copies of Certificate of Registration or other adequate documents);
- Documents relevant to the goods for recordal, including: list of authorized importers/exporters; mode of importation/exportation of genuine goods; description of how to distinguish the genuine goods from infringing ones; documents on the origin of genuine goods; pictures of genuine goods; and
- A notarized and legalized POA (if filed through a local IP Agent).

### Supporting Documents:

The applicant should submit the following supporting documents (if any):

- Information on estimated time and venue of import and export;
- Expert opinions on infringing goods; and
- Sanctioning decisions by enforcement agencies in similar cases of infringement upon the rights to the subject matters in question.

No later than 20 days from the receipt of the request, the Customs Office should notify the applicant whether it has accepted or rejected the application. The effective period of the recordal is one year from the date of the acceptance notice by the Customs Office and may be extended for a further one year upon request. After that, IPR holders must re-file a fresh application if they wish to pursue the monitoring.

IPR holders should either hold training courses for customs officials or participate in seminars organized by them for the purpose of raising their awareness of infringing goods, leading to higher effectiveness of customs monitoring.

## Suspension of Customs Clearance

Upon acceptance of the IPR holder's request for monitoring, the Customs Offices will begin monitoring for infringing goods. When they detect suspected goods, the Customs Office will temporarily suspend the clearance of the goods and notify the IPR holder or its representative. Within three working days from the date of the notice, the IPR holder or its representative should submit an application for suspension and a deposit bond or bank guarantee for an amount equal to 20% of the value of the goods that are subject to the suspension, or at least VND 20 million (USD 1,000), if the total value of the goods cannot be determined.

The IPR holder is still entitled to request suspension of customs clearance even if he/she does not request monitoring beforehand in a specific case in which he/she is aware of an incoming shipment of infringing goods. In this regard, apart from providing the Customs Office with detailed information about the shipment, the applicant must deposit a bond or submit a bank guarantee to secure its request.

The time limit for suspension of customs clearance is 10 working days from the day the applicant receives the Decision on suspension of customs and can be extended, but must not exceed 20 working days.

Within the prescribed time limit for suspension, the IPR holder is entitled to obtain evidence for verifying whether the suspended goods are indeed infringing. If an infringement is found, the IPR holder should proceed with possible actions, including initiating a civil lawsuit against the owner of the detained goods, requesting the Customs Office to take administrative action against the owner of the detained goods, or reaching a settlement agreement with the owner of the detained goods.

This summary is designed to provide general information only and is not offered as specific advice on any particular matter.

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