

Rabat, Morocco, March 10, 2006

**Circular No. 4994/410**

(English version \*)

**SUBJECT:**

Combating counterfeiting.

Border measures.

**REFERENCE:** - Law No. 17-97 on the Protection of Industrial Property, as amended and supplemented by Law No. 31-05 (BO 5397 of February 20, 2006).

- Decree No. 2-05-1485 of February 21, 2006 establishing the conditions of application of the above-mentioned Law No. 17-97.
- Joint Order of the Minister of Finance and Privatization and the Minister of Industry, Trade and Economic Development No. 206-06 of February 21, 2006 laying down the conditions for implementation of Chapter VII of Law No. 17-97 on the Protection of Industrial Property relating to border measures.

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Law No. 17-97 on the Protection of Industrial Property was amended and supplemented by the provisions of Law No. 31-05 referenced above, particularly in terms of the role of the Customs and Excise Authority, by Chapter VII relating to border measures.

The provisions of Articles 176.1 to 176.8 of the aforementioned law shall authorize, under certain conditions, the Customs and Excise Authority to suspend, at borders, the release for free circulation of suspected counterfeit merchandise.

Border measures concerning imports, exports and transit operations may be introduced:

- at the request of the owner of the mark or the exclusive beneficiary of the right of exploitation of the mark; or
- at the initiative of the Authority.

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\* Courtesy translation provided by WIPO.

The aim of the present Circular shall be to state the legal and regulatory framework of the role played by the Authority at borders and to outline this role. A separate note to be disseminated shortly will provide the clarifications and details needed for the application of this measure.

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- notify the Authority of any change in the elements that have motivated the application.

In principle, the application for suspension shall only be valid for one year. However, the applicant may submit, 30 days before the expiry of the above-mentioned deadline, a request for renewal, which shall not exceed the remaining period of protection for the mark.

**2- Processing of suspension applications:**

In order to improve the handling of this new subject matter, and with a view to ensuring the desired standardization in the processing of relevant files, it has been decided that the processing of these files should begin within the Central Authority.

In conjunction with the Moroccan Office of Industrial and Commercial Property, the Authority shall thus process the file and inform the applicant of the outcome of the application within a period not exceeding 30 days.

While the file is being processed, the Authority may demand from the applicant any supplementary information or documents considered necessary.

When the application meets the requirements, the Central Department shall inform the interested party by post that his/her application is admissible. The file shall then be forwarded to the customs office(s) designated by the applicant to enable the latter to suspend the release for free circulation of suspected counterfeit merchandise.

If the application is rejected, the interested party shall be informed by post of this decision and the reasons for refusal, within a period of 30 days from the date of filing of the application.

**3- Realization of the suspension measure:**

The suspension measure shall be implemented by the office concerned, upon customs clearance of the suspected counterfeit merchandise, when the documents are checked or at the time of physical inspection.

Indeed, if the customs check confirms the suspicion of counterfeit merchandise for which an application has been made, the customs department shall suspend the release for free circulation and the applicant shall be informed of this decision by registered post (see model in annex 3) without delay.

The declarant of the merchandise shall also be informed of this measure in the same conditions (see annex 4).

The Customs Department shall communicate to the applicant, on the basis of his/her written application, information relating to the names and addresses of the importer, the sender and the recipient of the merchandise, and the quantity of merchandise, so that the applicant may take legal action (protective measures or action at law).

#### **4- Follow-up action taken in relation to the suspension measure:**

In accordance with the provisions of Article 176.2 of Law No. 17.97, the applicant shall justify, to the department that carried out the suspension of the release for free circulation of the suspected counterfeit merchandise, within **10**

**Translator's note: text appears to be missing from original**

### **III – Final provisions:**

Whether dealing with a measure to suspend the release for free circulation of merchandise initiated by the Authority on request, or a measure undertaken of its own motion, the liability of the Authority shall not be incurred provided that the necessary formality has been adhered to.

With this in mind, the attention of the Department shall be drawn emphatically to the importance of respecting the established time limits with regard to what is at stake in terms of the measure's impingement upon the right of the importer or the protection of the right holder.

Nonetheless, the applicant may be held liable for damages to the owner of the merchandise, where the merchandise is not recognized as being counterfeit. In such a case, the court may order compensation for damage sustained by the owner of the merchandise.

The suspension measure shall not apply to merchandise of a non-commercial nature contained in the personal luggage of travelers, in small quantities or sent in small consignments for personal and private use.

Lastly, it is hereby stated that these border measures initiated by the Authority shall not preclude seizures ordered by the court, at the request of the Public Prosecutor's Office or any

other interested party, in accordance with the provisions of Article 206 of the above-mentioned Law No. 17-97.

Any difficulty in the application of these measures shall be notified to the Central Authority using the contact details contained herein.

**DIRECTOR GENERAL OF THE CUSTOMS AND EXCISE AUTHORITY**

**(signed)**

**ABDELLATIF ZAGHNOUN**

**Edition 1 No. 14  
2006**

**Information on the suspected counterfeit merchandise:**

- Nature of merchandise:
- Trade description:
- HS Heading Number:<sup>3</sup>
- Origin:<sup>3</sup>
- Provenance:<sup>3</sup>
- Distinctive elements identifying the suspected counterfeit merchandise:<sup>4</sup>
- Country of production:<sup>3</sup>
- Name and address of supplier:<sup>3</sup>
- Other useful information:<sup>3</sup>

**Attachments:**

- Undertaking
- Other documents:

Done at ..... (place),..... (date)

Stamp and signature

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<sup>3</sup> If the information is available.

<sup>4</sup> Attach documents (catalogs, photographs, brochures, etc.).

Regional Department:

District:

Office:

**Annex 3**

**To**

**Mr./Ms**.....

**Subject:** Protection of industrial property: Border measures.

Suspension of the release for free circulation of suspected counterfeit merchandise.

**Reference:** Your application, dated .....

Dear Sir/Madam,

In accordance with your above-mentioned application and pursuant to Articles 176.1 and 176.2 of Law No. 17-97 on the Protection of Industrial Property, I am pleased to inform you that on ..... (date) the Customs Department of the ..... Office , suspended the release for free circulation of merchandise consisting of ..... , bearing the mark ..... , suspected of being counterfeit.

It is therefore your responsibility to submit one of the following documents to the Customs Department by ..... (final deadline):

- the court decision ordering protective measures applicable to the merchandise that is the subject of the suspended release for free circulation; or
- a document approved by the Court hearing the case that certifies the undertaking of an action at law and the provision of a security set by the Court, to cover your potential liability should the counterfeiting not be subsequently recognized.

Failure to submit the said documents by the above-mentioned deadline shall force the Authority to lift the suspension measure in question.

Yours faithfully,

Regional Department:  
District:  
Office:

**Annex 5**

**To**

**Mr./Ms**.....

**Subject:** Protection of industrial property: Border measures.  
Suspension of the release for free circulation of suspected counterfeit merchandise.

Dear Sir/Madam,

I am pleased to inform you that, in accordance with Article 176.4 of Law No. 17-97 on the Protection of Industrial Property, on ..... (date) the Customs Department of the ..... Office , suspended the release for free circulation of merchandise consisting of ..... , bearing the mark ..... , suspected of being counterfeit.

It is therefore your responsibility to submit one of the following documents to the Customs Department by ..... (final deadline):

- the court decision ordering protective measures applicable to the merchandise that is the subject of the suspended release for free circulation; or
- a document approved by the Court hearing the case that certifies the undertaking of an action at law and the provision of a security set by the Court, to cover your potential liability should the counterfeiting not be subsequently recognized.

Failure to submit the said documents by the above-mentioned deadline shall force the Authority to lift the suspension measure in question.

Yours faithfully,