

## **Philippines**

Pursuant to the provisions of the Intellectual Property Code of the Philippines ("IP Code") in relation to Sections 51-60 of the Trade Related Aspects of Intellectual Property Rights Agreement ("TRIPS"), the Philippine Bureau of Customs ("BOC") issued Customs Administrative Order No. 06-2002 ("CAO 06-2002") which provided administrative guidelines to expedite the handling and disposition of infringing goods imported into the country.

The objectives of CAO 06-2002 are, among others: (i) to give meaning and substance to laws prohibiting the importation of goods or products that infringe upon all intellectual property rights as defined by the IP Code; and (ii) to enhance existing procedures in conformity with international standards specifically set in the TRIPS Agreement on special border control to prevent the entry into the country of certain prohibited merchandises.

To effectively implement CAO 06-2002, the BOC created a permanent Intellectual Property Rights Unit tasked to strengthen the implementation of the border control program of the BOC.

### **Prohibited Goods**

Under CAO 06-2002, the importation of the following goods is prohibited:

1. Those which shall copy or simulate any mark or trade name registered with the Philippine Intellectual Property Office ("IPO") in accordance with the IP Code, without the authorization or consent of the registrant or its duly authorized agent;
2. Those which shall copy or simulate any well-known mark as determined by competent authority, without the authorization or consent of the owner or its duly authorized agent;
3. Those which are judicially determined to be unfairly competing with products bearing marks whether registered or not;
4. Those which constitute as a piratical copy or likeness of any work, whether published or unpublished, on which a copyright subsists;
5. Those which present themselves as a substantial simulation of any machine, article, product, or substance duly patented under the IP Code, without the authorization or consent of the patentee or its duly authorized agent; and
6. Those which use false or misleading description, symbol, or label that is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of the imported goods with another person's goods; or those which misrepresent their nature, characteristics, qualities, or geographic origin.

### **Remedies**

#### *Recordation of Intellectual Property Rights ("IPR")*

An IPR Holder/Owner, or his agent, may apply with the Commissioner of BOC for the recording of his IPR and the product/s covered by such right/s. It takes approximately six (6) months for the BOC to release the Customs Memorandum Circular ("Circular") informing the applicant that the request for recordation has been effected. The validity of the recordation is two (2) years from the date of issuance of the Circular and renewable for a period of two (2) years at a time.

The BOC requires that an affidavit be submitted by the applicant attesting to its rightful ownership over the IPR sought to be recorded. In cases where the request is made by the

designated agent of the IPR owner, the BOC requires that an affidavit be executed by the said agent stating that he is duly authorized by the IPR Holder/Owner to make the application.

On the basis of the recordation, the BOC monitors and inspects suspected imports in order to determine whether the goods are subject to seizure and forfeiture. The IP owner or its authorized agent shall be notified of the suspected import through an Alert Order. Articles placed under Hold or Alert Orders shall be examined by the assigned customs examiner in the presence of the IPR Holder/Owner or his agent and the consignee or representative within twenty four (24) hours from receipt of notice of alert or hold order.

In the event that there is *prima facie* basis to subject the goods to seizure proceedings, a Warrant of Seizure and Detention shall be issued against the shipment within twenty-four (24) hours. Within five (5) working days from date of seizure, the claimant, importer or owner of the seized goods or his agent shall be given a written notice of the seizure. For the purpose of giving such notice, the importer, consignee, or person holding the bill of lading shall be deemed the owner of the seized property described in the bill of lading. For the same purpose, "agent" shall be deemed to include not only the agent in fact of the owner of the seized property but also any person having legal possession of the property at the time of the seizure, if the owner or his agent in fact is unknown or cannot be reached. In case of an unknown owner or claimant, the notice shall be effected by posting for five (5) days in public corridor of the customhouse of the district in which the seizure is made, and, in the discretion of the Commissioner, by publication in a newspaper, or by such other means as he shall deem desirable. If within 10 days after due notification prescribe in the preceding paragraph, no claimant, owner or agent appears or can be found, the Collector shall declare the property forfeited in favor of the government.

The IPR owner/holder or its duly authorized agent shall likewise be notified of the seizure. With the seizure of goods, the burden shifts to the claimant to prove that its goods are not "prohibited importation" as enumerated above.

After service of the notice of seizure, the Collector shall immediately set the case for hearing. The case shall be decided after all the parties are heard or given an opportunity to be heard or within 20 working days from the date the case is set for hearing.

Section 2312 of the Tariff and Customs Code of the Philippines ("TCCP") provides that in seizure cases, the Collector, after a hearing, shall in writing make a declaration of forfeiture or fix the amount of the fine or take such other action as may be proper.

#### *Alert/Hold Order*

If time is of the essence, a request for the issuance of an alert or hold order may be filed with the BOC before proceeding with the request for recordation.

By virtue of CAO 06-2002, the BOC allows IPR owners or their designated agents to file a request for an alert or hold order with respect to an importation suspected to contain infringing goods. By providing the BOC with details on the importation, *i.e.*, name of importer, name of exporter, country of origin, and approximate date of importation, the BOC will be alerted of the illegal importation. Articles placed under Hold or Alert Orders under CAO 06-2002 shall be examined by the assigned customs examiner in the presence of the IPR Holder/Owner or his agent and the consignee or his duly authorized representative/s within twenty four (24) hours from receipt of notice of the alert or hold order. If, upon examination of the goods, no basis is found to subject the goods to seizure proceedings, the Alert or Hold Order shall immediately be lifted, and the

processing of the import entry shall immediately continue. On the other hand, if there is prima facie basis to subject the goods to seizure proceedings, the matter shall, within twenty-four (24) hours, be referred to the Collector the BOC for the issuance of a Warrant of Seizure and Detention against the shipment.

## **Review**

Sec. 2313 of the TCCP provides that the person aggrieved by the decision or action of the Collector in any case of seizure may, within 15 days after notification in writing by the Collector of his action or decision, give written notice to the Collector of his desire to have the matter reviewed by the Commissioner of the BOC. Thereupon, the Collector shall transmit all the records of the proceedings to the Commissioner of the BOC, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision.

Notice of the decision of the Commissioner shall be given to the party by whom the case was brought before him for review, and such notice shall be effected by personal service if practicable.

Section 2402 of the TCCP in turn provides that the party aggrieved by a ruling of the Commissioner may appeal to the Court of Tax Appeals within 30 days from Notice of the Decision of the Commissioner. Unless a timely and proper appeal is made to the Court of Tax Appeals, the action or ruling of the Commissioner shall be final and conclusive.

The person aggrieved by the decision or action of the Court of Tax Appeals shall file an appeal via a petition for review with the Court of Appeals within 15 days from the notice of award, judgment, final order or resolution. Upon proper motion, the Court of Appeals may grant an additional 15 days within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed 15 days.

The party aggrieved by the decision of the Court of Appeals may then file a petition for review on certiorari with the Supreme Court within 15 days from the notice of award, judgment, final order or resolution. Upon proper motion, the Supreme Court may, for justifiable reasons, grant an additional 30 days within which to file the petition for review on certiorari.

Note, however, that if the Collector renders a decision adverse to the Philippine Government, such decision shall automatically be elevated to and reviewed by the Commissioner of the BOC; and if the Collector's decision is affirmed by the Commissioner, such decision shall be automatically elevated to the Secretary of Finance for final review. If within 30 days from receipt of the record of the case by the Commissioner or by the Secretary of Finance, as the case may be, no decision is rendered by either of them, the decision under review shall become final and executory.