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# TRIPS BORDER MEASURES OPERATING PROCEDURES

November 2005

This publication was produced for review by the United States Agency for International Development. It was prepared by Judy Goans

# **TRIPS BORDER MEASURES OPERATING PROCEDURES**

ASSISTANCE FOR TRADE REFORM

CONTRACT NUMBER: PCE-100-98-00016-00, TASK ORDER 827

NATHAN ASSOCIATS

USAID/EGYPT POLICY AND PRIVATE SECTOR OFFICE

NOVEMBER 2005

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## **DISCLAIMER:**

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## TRIPS Border Measures Operating Procedures

**Responsibility of the Customs Authority:** The Customs Authority is the competent authority “to suspend the release of imported goods or products or packages into free circulation allegedly involving infringement on intellectual property rights (rights of the copyright holder and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit lay-out designs), provided that the goods are entering Egyptian ports or yet to be released from Customs.” Regulations Chapter 9, Article 27. The Customs Authority must also provide a copy of the complaint to the IPR Border Measures Office (“Office”) in the Trade Agreements Sector at the Ministry of Foreign Trade And Industry, unless the applicant (complainant) has filed the complaint with the Office. The Customs Authority is also responsible for identifying goods alleged to be infringing, taking steps to assure that they are not released into the domestic market until complaint procedures are completed, and then taking such action as may be required under the complaint procedures, i.e., either releasing the goods to the importer or forwarding them to the judicial authorities for destruction or other similar action, and informing the Office as to the measures that have been taken.

**Responsibility of the Office:** The IPR Border Measures Office is established within the Trade Agreements Sector at the Ministry of Foreign Trade And Industry to act as a technical secretariat that assists with the administration of rules to prevent the importation of goods that infringe intellectual property that is protected in Egypt. The role of the Office is to act on complaints against shipments of goods that infringe intellectual property rights in Egypt. This includes the responsibility to maintain records of complaints that have been filed, to acquire the information needed to determine whether there is a *prima facie* claim of infringement that is actionable under the Regulations, to make a decision in accordance with that information and notify the Customs Authority and parties, and to maintain records of the actions taken on complaints. In addition, the Office must notify the Customs Authority that a complaint has been filed, unless the applicant (complainant) has filed the complaint with the Customs Authority.

**Complaint:** Action is initiated by the filing of a complaint alleging infringement of an intellectual property right protected in Egypt.

**Subject matter of complaint:** A complaint can be filed relating to the following subject matter: rights of the copyright holder and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit lay-out designs). Regulations Chapter 9, Article 27.

**Who can file a complaint:** A complaint may be filed by one of the following parties:

- The owner of the intellectual property right, acting directly or through an agent;
- A rightholder who has less than the entire interest in the intellectual property, for example, the holder of an exclusive license in Egypt (*See TRIPS Article 51*); or
- A federation or association representing interested industrialists, producers, or merchants (*See Paris Convention Article 10ter*).

**Where a complaint can be filed:** The complaint can be filed with the Customs Authority or with the Office. If the complaint is filed with the Customs Authority, the Customs Authority will immediately notify the Office and provide a copy of the complaint to the Office; if the complaint is filed with the Office, the Office will immediately notify the Customs Authority and provide a copy of the complaint to the Customs Authority. This notification and providing a copy of the complaint can be done by any appropriate means but should preferably be accomplished electronically, for example, by sending an email or fax to the appropriate address, since this will usually be the fastest means of communication.

**Contents of complaint:** The complaint must include the following information (See *Regulations Chapter 9 Article 28*):

- 1- The applicant's name and position, and the name of the applicant's representative, if there is a representative.
- 2- A detailed description of suspected consignment/consignments subject of complaint regarding the exporting country, bill of lading number and date, port of destination, name of importer, and description of goods.
- 3- Adequate evidence and documents to establish that there is a prima facie case of infringement of intellectual property rights protected in Egypt.
- 4- A certified deed to assert IPR ownership subject of complaint along with an affidavit indicating the property has not been assigned or subject to a usufructuary right.
- 5- An affidavit by the IPR holder verifying that he has not filed a request for a decision on the merits by the competent chief justice to the effect of taking one or more provisional measures or that no decision rejecting the provisional measure regarding the brief has been issued.

**Procedures to be followed upon receipt of complaint:** Following are detailed operating procedures to be followed in responding to complaints. Examples are provided to illustrate the procedures.

**1. Clerk will log in complaint, provide the complainant with a filing receipt and explanatory documents, and forward case to member of the technical staff.**

- Send Form Letter 1 immediately – on the same day the complaint is received. It is acceptable to hand the letter to the complainant if the complaint is filed in person.
- Attach Complaint Form if not included with complaint.
- Notify Customs Authority immediately of the filing of the complaint, using the Customs Notification Form.

**2. Technical staff will review complaint for completeness and to determine whether it states a claim on which the Office can act, inform the complainant of the necessity and legal implications of signing the complaint form, and determine any fees or security that must be paid.**

- Inform the complainant that by signing the complaint form, the complainant attests (swears) that the information provided is true and correct to the best of his/her knowledge and that the complaint is made for a legitimate purpose, and that submitting a complaint that is frivolous or made for an improper purpose can result in the complainant's security being not only forfeited but handed over to the importer.
- Review the complaint form and file to identify any likely errors that may have occurred, e.g., wrong shipment number, wrong patent or trademark registration number, and proceed to repeat any steps that may be required to obtain correct information.
- If complaint is complete, and required fees and deposits have been paid, determine whether there is a "reasonable suspicion" that said goods infringe intellectual property rights. If so, proceed to step 3.
- If the complaint is incomplete, send Form letter 2, informing complainant of missing items, time limit for furnishing the missing items, and consequences of not furnishing them by the stated time.
- If there is a reasonable suspicion to believe that the goods are infringing, and the complaint supplies "a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities" but does not supply all of the information required by Article 28.2 of the Regulations – "2- A detailed description of suspected consignment/consignments subject of complaint regarding the exporting country, bill of lading number and date, port of destination, name of importer, and description of goods" – the technical staff should also forward a copy of the submission to the relevant

customs office and request that the customs authorities attempt to identify the goods and if they are found, to forward the missing information to the Office so that the complaint can be completed.

- If it appears that the complaint is frivolous or states a claim that is not actionable under the Regulations, send Form Letter 6.

**Note:** It is not necessary that all required information be *supplied on the complaint form*, which is a helpful guide to obtaining the desired information and serves to direct complaints to the appropriate staff and committee member. For purposes of TRIPS border measures procedures, the “complaint” includes both the information supplied *on* the form (on the paper) and information supplied *with* the form (attached to the paper or submitted with it).

Some complaints will be filed concerning items that are not within the purview of the IPR Border Measures Office or the Customs Authority. If such complaints are received, technical staff should respond with a courteous letter directing the complainant to the proper authority. See example letters below.

Suspect infringing goods can only be detained upon a "reasonable suspicion" that said goods bear infringe intellectual property rights.

**Discussion:** A complaint should normally contain a statement of the complainant's interest in the goods - as owner, exclusive licensee, or federation or legal association with standing to assert legal protection - and a description of the basis on which infringement is alleged. *While it is the complainant's responsibility to furnish information, Office staff should assure that the proper information is secured, using the complaint form as a guide and seeking any missing information from the complainant.* **If a complaint is filed that does not include all of the information required under the regulations, the complainant should be given an opportunity to supply the missing information.**

The Office needs to secure sufficient information to identify the allegedly infringing goods and the basis for the claim of infringement. The TRIPS standard is that the complaint must supply “a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities.” However, Article 28.2 of the Regulations requires the complaint form to include “A detailed description of suspected consignment/consignments subject of complaint regarding the exporting country, bill of lading number and date, port of destination, name of importer, and description of goods.” Since this information will rarely if ever be in the possession of the intellectual property owner, the technical staff and customs authorities should work with the complainant to attempt to identify the goods and supply the missing information so that the complaint can be completed in accordance with the Regulations.

It is not sufficient to state that the goods “are infringing” or “infringe my copyright”: the claim must state in what manner the goods infringe, e.g., “copies of the copyrighted video game Superblaster of which I am the sole licensee” or “substantially reproduce the packaging and registered trademark of my paperclips” or “infringes claim 3 of Egyptian patent no. 47000, of which I am the owner, by incorporating a valve covered by that claim.” It is not necessary that the claim be stated in a particular way, but it should contain sufficient information to state a *prima facie* case of infringement.

Because the work of the Office will result in the suspension of Customs release of the goods of another party, the Office should require the complainant to post a bond or to show evidence that bond has been posted. The Office has no obligation to act on a complaint that it believes to be frivolous. If a complaint is filed that the Office believes to be frivolous, the complainant has the option of complaining about this decision to the police or the courts.

**3. Technical staff assigned to case will notify GOEIC or Customs regarding the goods; GOEIC or Customs should search for allegedly infringing item, set it aside for inspection, and suspend release pending notification by IPR Border Measures Office.**

- If the relevant Customs offices are known or can be determined from the Complaint Form, immediately contact these offices by telephone, fax, or email.
- Send the Customs Notification Form to the relevant office or to all offices if the relevant office cannot be immediately determined.
- If the items are identified, communicate this fact to all other offices that have been previously notified to search for the items.

**Discussion:** The TRIPS Agreement requires that infringing items not be released from Customs. Immediate action is needed to avoid having the goods released, but this should be followed promptly by the remaining procedures. The IPR Border Measures Office staff should take action immediately to notify the relevant office not to release the goods, and follow up with a written notification. If the relevant office is known from the Complaint, it is not necessary to notify all offices. However, if the relevant office is not known, notify all offices to look for the allegedly infringing items. Once the allegedly infringing goods have been identified, the IPR Border Measures Office should so advise any other offices that have been asked to look for the goods.

**4. IPR Border Measures Office technical staff will review the complaint to determine whether it states a *prima facie* case of infringement.**

- Review the complaint itself to make this determination. The determination is made on the written record.
- For purposes of this review, the technical staff will assume that all allegations in the complaint are true, including statements of ownership of intellectual property rights in Egypt.
- Use Request for Technical Assistance Form if requesting assistance from another source. (See item 5, below.)

**Discussion:** The Office will make an initial or preliminary decision concerning whether the complaint states a set of facts that, if taken to be true, would state a claim of infringement, i.e., a *prima facie* case of infringement. This does not require any determination of the truth or falsity of the claim or of any mitigating factors; rather, this is a decision that should be made on the (written) record. Furthermore, the determination is not whether infringement actually exists but whether, on the basis of the facts stated (and observed), *it could reasonably be argued that infringement exists*. The actual determination of infringement or noninfringement will be made by the courts. The role of the IPR Border Measures Office is, in a sense, to rule out the possibility of infringement when that can be done and to take action in all cases where a reasonable argument can be made that infringing goods are in transit into Egypt.

If necessary information is missing, the complainant may be invited to furnish additional information. If the complaint does not state a *prima facie* case of infringement, the Office should dismiss the complaint and notify the complainant of this action and briefly state the procedures for instituting an appeal, i.e., that the applicant has the right to appeal to the courts, and the applicable time periods for filing an appeal. If the complaint does not indicate that the complainant has taken the necessary steps to protect his or her rights in Egypt, the notification should include brief information on obtaining such protection, e.g., the advice to register a trademark and address of the Trademark Office.

Determining whether a particular complaint states a *prima facie* case of infringement is sometimes highly technical. It is desirable for the IPR Border Measures Office technical staff to develop a high level of expertise in intellectual property so that they can make this finding in most cases. In cases where the IPR Border Measures Office personnel are not certain

whether the complaint states a *prima facie* case of infringement, they should have no hesitation in consulting persons with expertise in the relevant subject matter, for example, trademark examiners in the Trademark Office, or technical examiners in the Patent Office. In seeking such assistance, the IPR Border Measures Office staff should follow the procedure that has been established to provide for cooperation among the various intellectual property offices. The IPR Border Measures Office staff member assigned to a case is not bound by the advice of the expert but should give it great weight.

*There is no hard and fast rule for when the IPR Border Measures Office should consult with experts.* In general, the technical staff should seek advice from the industrial property offices in difficult or close cases but should not seek such an opinion routinely in all cases. Such consultation should be undertaken as a matter of course in situations that are highly technical, i.e., in most cases alleging infringement of a patent or semiconductor layout design and in close cases alleging trademark infringement. On the other hand, such consultation may not be required in simple patent cases, while some nonpatent cases may be highly technical or complex and consultation may be desirable. The one exception is that the IPR Border Measures Office should always seek technical advice if requested by one of the parties.

The important issue is not whether to consult with other experts but whether the decision is legally correct. Whether to seek assistance is in the discretion of the IPR Border Measures Office staff member, who should make that determination on the basis of his or her own judgment. The IPR Border Measures Office staff member should feel free to seek such assistance as may be useful, but failing to seek a second opinion is not a ground for appeal.

#### **5. IPR Border Measures Office technical staff will verify information and seek assistance, as needed.**

- Use Request for Technical Assistance Form to request verification of information or advice on evaluating a complaint as to whether it establishes a *prima facie* case of infringement.

**Discussion:** Regulations Article 28.4 provides that “A certified deed to assert IPR ownership subject of complaint along with an affidavit indicating the property has not been assigned or subject to a usufructuary right.” It is not necessary to verify any record that is already certified by the office issuing it, unless there is a suggestion that the record may have been altered or forged. If the Complaint includes a copy of the relevant document (patent or trademark or industrial designs registration), and this copy is certified by the issuing office (e.g., the Egyptian Trademark Office or Patent Office) as being a true copy of the original, the IPR Border Measures Office staff may move to the step 6.

If, however, there is any question in the mind of the technical staff member regarding the authenticity of a document submitted, there is no objection to verifying the information submitted. Verification of records can easily be done by a telephone call or email to the relevant office, to the contact established for this purpose. If verification of records is done by email, a copy of the reply and inquiry should be printed and placed in the file jacket. If it is done by telephone, a note should be made in the file by the technical staff as to the date and time of the telephone call, the person contacted, and the substance of the conversation.

**Note:** Some forms of intellectual property protection *do not require registration*: trade secrets, well-known marks, trade names, trade dress, or copyright. In these cases, no verification will be needed or useful, and IPR Border Measures Office technical staff should rely on their own review of documents.

**6. IPR Border Measures Office technical staff will verify with Customs officials whether goods have been located that conform to the identification and the description in the complaint.**

- Use Customs Notification Form.
- If the complaint both states a *prima facie* claim of infringement and asserts that the goods are entering or leaving Egypt, and the IPR Border Measures Office staff verifies that the goods substantially conform to the complaint, the IPR Border Measures Office should notify the appropriate entity within GOEIC to identify the goods and hold them briefly for further inspection.
- At the same time, the IPR Border Measures Office staff should notify both the defendant and the complainant as to whether the Office has accepted the application and the necessary procedures, applicable time limits for taking action, and the consequence of failing to take such action.
- If the goods do not substantially conform to the description in the complaint, the complainant should be notified of the discrepancy, given a brief period of time in which to provide updated information, and advised of the consequences of failing to provide such information. The Technical Staff member assigned the case should review it to determine whether there may have been errors in the complaint, for example, incorrectly recording a registration or shipment number. If no errors are noted in the file or complaint form, immediately contact the Complainant to ascertain whether there is a clerical error on the complaint itself, such as incorrectly recording the registration number or shipment number.
- If the identifying information is corrected so as to provide correct information (the items required by Regulations Article 28-2), or if it appears that the wrong goods have been identified by Customs, the corrected information should be sent to Customs, i.e., repeating steps 3 and 6.
- If the identifying information is not corrected so as to enable the location of the goods that are described in the complaint, the complaint should be dismissed pursuant to Article 28.2 on the grounds that the goods identified in the complaint cannot be identified from the information provided by the complainant.

**Discussion:** The goods that are the subject of a complaint should conform substantially to the description provided in the complaint. It is not necessary that the goods conform identically, provided that, in the opinion of the technical staff, the items being shipped are actually are those that form the subject of the complaint. In most cases, this can easily be determined by inspection of the goods.

In technical cases, it will be useful to seek assistance from the relevant experts (e.g., the Patent Office, plant variety experts, Trademark Office) to determine whether the goods do substantially conform to the complaint. In particular, it may be helpful to have the assistance of a technical examiner from the Patent Office in determining whether the asserted patent claims “read on” the items alleged to be infringing, or from the Plant Variety Protection Office in determining whether a shipment of seeds or food is covered by an asserted right under a plant variety protection law. The same considerations and rules for consulting experts mentioned under Section 4 above will apply under this section.

**Note:** The IPR Border Measures Office staff should take care not to allow this procedure to be abused, e.g., by allowing a complainant to “fish” for information about competitors or to harass competitors with a series of complaints made without a sound basis for believing that the infringing goods actually exist as described in the complaint. However, it is important to stop the flow of infringing goods, and IPR Border Measures Office staff should freely permit the correction of clerical errors.

**7. If all the above are satisfied, notify Customs to suspend release of the items from Customs, using the Customs Notification Form. Record this information in the file and log it into the database.**

**8. At the same time as notifying Customs, notify the Complainant that the goods have been suspended from release and that the Complainant has ten working days from the time of being served notice in which to initiate other proceedings leading to a decision on the merits (i.e., to file a case in court), pursuant to Regulations Article 32. Notify the Defendant (importer or consignee) at the same time that a complaint has been accepted and that the Defendant has the right to file an appeal no later than 3 days from the time of being served with notice, and that the Defendant must file an appeal in order to avoid having the complaint be considered final and to prevent the release of the security filed by the Complainant.**

Notices should be served by registered mail.

**9. The mail registrations showing receipt should be placed in the file and logged into the data base. Three days after the date of notification of the Defendant, if the Defendant has not filed a notice of appeal, the Complainant's security should be released pursuant to Regulations Article 38.**

**10. Ten days after the date of notification of the Complainant, the IPR Border Measures Office technical staff should review the case to determine whether the Complainant or rightholder has filed a case leading to a decision on the merits or has requested an extension of time for this purpose. Any extensions of time should also be logged into the data base and the file reviewed at the end of the 10 days or 20 days, as the case may be. At this time, the Office should**

- Prepare a Summary of the Case and Proposed Action.
- If the IPR Border Measures Office is informed within ten working days that court proceedings have been initiated by a party other than the defendant, the goods will be suspended from customs release until such time as the matter is resolved.
- If the IPR Border Measures Office is not informed within ten working days that such proceedings have been initiated by a party other than the defendant, it may
  - Entertain a request to extend the period of Customs release by an additional ten working days, for good cause shown, or
  - If no request for an extension is received, notify Customs that the IPR Border Measures Office has no further reason to suspend release. In this case, Customs should continue procedures for release and may the items, provided that all other conditions for importation or exportation have been complied with.
- If proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, upon request by the defendant, the IPR Border Measures Office should notify Customs to terminate the suspension that is carried out or continued in accordance with a provisional judicial measure taken
  - to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance, or
  - to preserve relevant evidence in regard to the alleged infringement, or
  - where the provisional measures are adopted without a hearing by the other party, in particular where any delay is likely to cause irreparable harm to the holder of the intellectual property right or where there is a demonstrable risk of evidence being destroyed.
- Where an application relates to the release of goods involving industrial designs, patents, layout-designs or undisclosed information, and release of those goods into free circulation has been suspended by customs authorities other than by a court order, and

the period for filing a case has expired, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of the security does not prejudice any other remedy available to the right holder, and the security must be released if the right holder fails to pursue the right of action within a reasonable period of time.

**11. Where goods are released, the costs borne by the goods as a result of suspended release shall be deducted by Customs from the security or cash guarantee posted by the complainant, pursuant to Regulations Article 36.**

- If corrected information is provided, proceed with the complaint as under Case 1.
- If after checking for possible errors, the items in the shipment do not correspond to the complaint, notify the complainant that the complaint will be dismissed and the goods released because the items do not correspond to the complaint. Use Form letter 1 for this purpose.

**12. The Office should freely receive a single request for reconsideration by either party.**

If either party is dissatisfied with the holding of the Office and presents evidence or arguments that may affect the Office's decision in the case, the staff should reconsider its holdings in light of that evidence and/or argument. This is preferable to forcing a party to file an appeal to the courts if there is a chance that corrective action can be taken within the Office. However, the Office is not required to reconsider its decision merely upon request, and reconsideration does not guarantee that the Office will reach a different decision. In addition, reconsideration does not extend any periods for taking action.

### **Inquiries**

In many cases, the IPR Border Measures Office will be a focus point on intellectual property for persons seeking information on intellectual property in Egypt. This is consistent with the IPR Border Measures Office's role in providing information. If there is no allegation of infringement but the contact seeks information, the matter should be treated as an "inquiry" rather than a "complaint." In this case, the IPR Border Measures Office staff should not log in the contact as a complaint or open a file but should make a note of the name and address of the person making the inquiry and the general subject matter of the inquiry – e.g., seeking information on how to register a mark or engage a patent attorney. The IPR Border Measures Office should direct the individual to the proper authority within the GOE or in the private sector. The IPR Border Measures Office should also maintain a store of basic informational flyers on Egypt's intellectual property system and should provide a copy at no charge in response to such requests. Typical examples would be individuals who want to know how to obtain a trademark (refer them to the Trademark Office and suggest that they obtain a list of agents and attorneys) or who want to know how to obtain a license for some item they have seen (refer them to the owner of intellectual property rights and suggest that they may find the license recorded in the pertinent industrial property office). The IPR Border Measures Office response should briefly state that this is not a matter that the IPR Border Measures Office handles and correctly direct the individual to the proper place.

### **Avoiding Duplication of Effort**

The IPR Border Measures Office can expect to receive numerous complaints about infringement where the subject matter of the complaint is more properly handled by another organization. In such cases, the intellectual property owner may have a right to a civil remedy by filing suit in court, or criminal penalties may apply. IPR Border Measures Office staff should avoid becoming involved in such cases except as outlined above. Doing so will improperly involve the IPR Border Measures Office in matters it is ill-equipped to handle, at

the expense of its ability to respond quickly and appropriately in those cases that are its exclusive responsibility. Furthermore, becoming involved in these cases will harm the intellectual property owner, who will rely on the IPR Border Measures Office to take action that is beyond its authority instead of seeking the appropriate remedy through the courts, private attorneys, and public prosecutors.

The IPR Border Measures Office response to inquiries in this regard should be to state briefly that this is not a matter where the IPR Border Measures Office has authority, that if the owner of the intellectual property right believes infringement has occurred, such person has the right to take civil action to recover damages and, in those cases where there are also criminal penalties, to make a complaint to the police authorities. In the latter case, the response should also offer to pass the complainant's information to the police. In both cases, the response should briefly and correctly advise the complainant of the procedures on how to proceed. This advice should include the name of the court and advice to obtain an attorney.

### **Informal Dispute Resolution – Arbitration and Mediation**

In many cases, economic considerations will encourage the parties in an intellectual property case to attempt to settle their differences informally. They may do this through negotiation directly between the parties or may seek the services of an arbitrator or mediator. In the event that this occurs and the Complainant wishes to withdraw a complaint, the IPR Border Measures Office should allow this to be done freely. If the parties present an agreement as part of the settlement of their dispute, the IPR Border Measures Office should insert a copy of the agreement in the file and close the case. If the parties do not choose to present a copy of their agreement, that decision should also be respected. In no case should the IPR Border Measures Office staff take responsibility for negotiating, encouraging, or enforcing such agreements or take part in any settlement discussions.

### **Reporting and Exchange of Information**

At least annually, the IPR Border Measures Office should report to the Minister on the types of cases handled during the year, the countries of origin of infringing goods and the types of infringement and goods involved, and any other data of interest. This information should be shared with the TRIPS Contact Point to enable it to carry out its mission.

## **Operating Procedures – Clerical Staff**

**1. Clerk will log in complaint and forward case to member of the technical staff**

This should be done immediately – on the same day received

**2. Clerk will open file on cases accepted by IPR Border Measures Office technical staff.**

All documents will be placed in file, with a copy to the professional handling the case.

**3. Professional will notify parties and clerk of time for taking action; clerk will log in the date.**

**4. Clerk will notify professional staff member when time limit for response is expired.**

**5. Clerk will prepare correspondence, log in all correspondence received and all correspondence sent.**

## SUMMARY OF RELEVANT TRIPS PROVISIONS

Special requirements related to border measures are found in Section 4 of the TRIPS Agreement, Articles 51 - 59.

- Article 51 requires member nations to adopt procedures under which a holder of intellectual property rights (including a federation or association with legal standing to assert intellectual property rights) who has valid grounds to suspect that the importation of counterfeit trademark or pirated copyright goods may take place may file a written request for the competent authorities to suspend the release of such goods into free circulation. The TRIPS Agreement provides that these procedures may also be made applicable to the suspension of goods involving the infringement of other types of intellectual property rights (e.g., patent rights, plant variety rights, neighboring rights, etc.) or for the export of infringing goods. Egypt should take advantage of this provision and make the procedures applicable to all forms of intellectual property and to the export of infringing goods.
- Article 52 requires that the intellectual property right holder who makes such an application must be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. Once such an application has been filed, the competent authorities are required to inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.
- Article 53 provides that the competent authorities must have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse, but not in an amount that would unreasonably deter recourse to these procedures.
- Article 54 requires that both importer and the applicant be promptly notified of the suspension of the release of goods.
- Article 55 allows the complainant has a period of ten working days from the time of being served notice that the goods have been suspended from release in which to initiate other proceedings leading to a decision on the merits. If the competent authorities are not informed that such proceedings have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods must be released, provided that all other conditions for importation or exportation have been complied with. In appropriate cases, this time-limit may be extended by another 10 working days.

If proceedings leading to a decision on the merits of the case have been initiated, a review must take place upon request of the defendant to decide whether the measures that have been taken - suspension from release or other decision - should be modified, revoked or confirmed. The review must take place within a reasonable period, and must accord the defendant a right to be heard. If proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, then upon request by the defendant, the suspension must be revoked or otherwise cease to have effect where it is carried out or continued in accordance with a provisional judicial measure taken to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance, or to preserve relevant evidence in regard to the alleged infringement, or where the provisional measures are adopted without a hearing by the other party, in particular where any delay is likely to cause irreparable harm to the holder of the intellectual property right or where there is a demonstrable risk of evidence being destroyed.

This “reasonable period” is to be determined by the judicial authority ordering the measures where national law permits or, in the absence of such a determination, must not exceed 20 working days or 31 calendar days, whichever is the longer.

Where an application relates to the release of goods involving industrial designs, patents, layout-designs or undisclosed information and release of those goods into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and this period has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security does not prejudice any other remedy available to the right holder, and the security must be released if the right holder fails to pursue the right of action within a reasonable period of time.

- Article 56 provides that the relevant authorities must have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released because proceedings were not instituted in the time allowed.
- Under Article 57, the competent authorities must also have the authority to allow the right holder to have an inspection of goods that have been detained in order to substantiate the right holder's claims. This right is subject to protecting confidential information. The authorities must also have the right to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, the law may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.
- Article 58 provides for the possibility that the competent authorities may also be required to act upon their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed. In such cases, the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers. The importer and the right holder must be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the same conditions of notification and release, within the same time periods, as those described for goods where a complaint is made by an intellectual property rights holder. Also in these cases, it is permitted to exempt both public authorities and officials from liability only for appropriate remedial measures where actions are taken or intended in good faith.

If the goods are found to be noninfringing, they must promptly be released and the complainant should be ordered to compensate the owner for any losses as a result of the complaint. If the goods are found to be infringing, they should be disposed of outside the normal channels of commerce in a way that does not prejudice the interests of the legitimate intellectual property owner. In most cases, it will not be sufficient to de-mark (i.e., remove the trademark from the goods, or obliterate the mark) counterfeit trademark goods, but this is generally a sufficient remedy in the case of goods that infringe but do not counterfeit a trademark.

**FORM Letter 1**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint, which has been assigned complaint no. \_\_\_\_\_. Please refer to this number in all correspondence.

Your case is being assigned to \_\_\_\_\_ (*name*) of our office. He/She can be reached at (*telephone number*) or you may correspond by email at (*email address*).

The IPR Border Measures Office will review your complaint to determine whether it states a case on which we can take action. It is your responsibility to provide us with adequate information so that we can determine whether you state a *prima facie* case of infringement and can identify the goods alleged to be infringing. However, your complaint would not be dismissed without first giving you a reasonable opportunity to remedy any deficiency. Please also be aware that the action of the IPR Border Measures Office will not constitute a final adjudication of your complaint. Egyptian and international law provide the defendant with an opportunity to be heard. If the IPR Border Measures Office finds that there is a *prima facie* case of infringement, we will coordinate with Customs officials to suspend release of the allegedly infringing items, but you will still need to seek a resolution of the infringement through the courts.

The IPR Border Measures Office will normally correspond with parties using ordinary mail, local telephone calls, or email, as applicable. If you wish us to communicate with you in any particular manner, please let us know your preference. At your request, the IPR Border Measures Office will be pleased to correspond with you via other means such as international courier service or long distance telephone or fax, at your expense. If you wish to use these other services, you may make arrangements directly with a courier service to accept packages from the IPR Border Measures Office to you or may agree to accept long distance charges for telephone calls and faxes from the IPR Border Measures Office. Alternatively, we have established a Deposit Account with \_\_\_\_\_ into which you can transfer an amount sufficient to cover any likely charges and authorize us to bill costs against that account. If you use the Deposit Account, any remaining funds will be refunded about 50 days after the conclusion of these proceedings.

Please let us know if we can be of further service.

Sincerely,

**FORM Letter 2**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint no. \_\_\_\_\_. I have reviewed your complaint and find that the following items are missing:

\_\_\_\_\_ Complainant's name and position;

\_\_\_\_\_ Name of applicant's representative, if applicable;

\_\_\_\_\_ Explanation of the Complainant's interest in the matter;

\_\_\_\_\_ Signed Complaint Form or equivalent document by which the Complainant states under penalty of law that the facts alleged, including all accompanying documents, are true and correct to the knowledge and belief of the Complainant and are not made for an improper purpose. The IPR Border Measures Office will not act on the Complaint without this assurance. However, we will accept a facsimile copy, which may be faxed to the following number \_\_\_\_\_ or an emailed copy of the scanned document.

\_\_\_\_\_ Description sufficient to identify goods in transit: detailed description of suspected consignment/consignments subject of complaint regarding the exporting country, bill of lading number and date, port of destination, name of importer, and description of goods (per Regulations chapter 9, Article 28)

\_\_\_\_\_ Adequate description of the intellectual property rights alleged to be infringed in Egypt.

\_\_\_\_\_ A copy of the applicable registration in Egypt, certified by the issuing office. (Note: no registration is required for copyright, trade dress, trade secrets, or trade names.)

\_\_\_\_\_ Affidavit indicating the property has not been assigned or subject to a usufructuary right.

\_\_\_\_\_ Adequate evidence and documents that there is a prima facie infringement of intellectual property rights. Please provide a more detailed explanation of how the applicable intellectual property rights are infringed by the particular goods.

\_\_\_\_\_ An affidavit by the IPR holder verifying that he has not filed a request for a decision on the merits by the competent chief justice to the effect of taking one or more provisional measures or if a request for provisional measures has been made, that no decision rejecting the provisional measure regarding the brief has been issued.

\_\_\_\_\_ A security or a letter of guarantee issued by an Egyptian bank accredited by the Central Bank of Egypt, in an amount that is 25% of the value of the goods that are the subject of the complaint, as specified by the Regulations Chapter 9, Article 29.

\_\_\_\_\_ Other \_\_\_\_\_

These items must be supplied to enable us to take action on your complaint.

Please feel free to contact me at (telephone number) or email address if you have questions.

Sincerely,

Enclosures

***NOTE: Enclose a copy of the Complaint Form with the applicable paragraph(s) marked. If a paragraph refers to more than one item, and some of the items are missing, mark out the items that have already been supplied so that it is clear to the complainant which items must be provided, for example,***

***\_\_\_\_\_ Complainant's name and position.***

**Customs Notification Form**

**Date** \_\_\_\_\_

A Complaint has been filed concerning allegedly infringing goods believed to be identified in the following manner:

\_\_\_\_\_ *(Insert information provided by Complainant)*

\_\_\_\_\_

\_\_\_\_\_ Please search for the above items and if found, notify the undersigned staff member in the IPR Border Measures Office at the telephone or email shown. Please do not release the goods before consulting with the undersigned staff member.

\_\_\_\_\_ Please search for the above items and if found, suspend them from Customs release and notify the undersigned staff member in the IPR Border Measures Office at the telephone or email shown.

\_\_\_\_\_ The above identified items have been located. Thank you for your efforts.

\_\_\_\_\_ The undersigned staff member would like to arrange to inspect the goods at the following time and place: \_\_\_\_\_

\_\_\_\_\_ A legal action has been instituted concerning the above goods. Please do not release the goods until further notice.

\_\_\_\_\_ The above matter has been resolved. The IPR Border Measures Office has no further need to suspend release from Customs.

*(signature, telephone number, and email address)*

Request for Technical Assistance

Date \_\_\_\_\_

A Complaint has been filed concerning allegedly infringing goods relating to the following intellectual property interests:

\_\_\_\_\_  
*(Insert information provided by Complainant)*  
\_\_\_\_\_

\_\_\_\_\_ The undersigned IPR Border Measures Office staff member would appreciate your assistance in verifying the above information.

\_\_\_\_\_ The undersigned IPR Border Measures Office staff member would appreciate your assistance in determining whether the stated intellectual property interest is applicable to the goods that have been identified by the Complainant.

Please treat this matter as confidential.

Thank you for your assistance.

*(signature, telephone number, and email address)*

**FORM Letter 3**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint no. \_\_\_\_\_. We have determined that your complaint states a *prima facie* case of infringement. This does not constitute an adjudication on the merits of the case, since the defendant has not yet had an opportunity to be heard. The goods identified have been suspended from Customs release pending notification by you that legal action has been instituted by a person other than the defendant.

You must notify us within ten (10) business days that legal action has been instituted and provide us with evidence of such action (e.g., a copy of the court filing receipt showing the case number and parties). Otherwise, the goods will be released when other Customs procedures have been fulfilled. This time may only be extended for good cause shown. Extensions are not automatically granted and would require posting of a bond.

Please let us know if we can be of further service.

Sincerely,

**FORM Letter 4 Goods Not Found to Conform with Complaint**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint no. \_\_\_\_\_. We have inspected the goods in the shipment identified in your complaint, and these goods do not conform with your description. You may wish to check with your source of information to see whether there has been a mistake in the description of the shipment, in which case, you may provide us with corrected information. If we do not hear from you within \_\_\_\_\_ days, this case will be closed.

Please let us know if we can be of further service.

Sincerely,

**FORM Letter 5 Complaint Rejected for Failure to Establish a Prima Facie Case of Infringement**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint no. \_\_\_\_\_. We have determined that your complaint does not state a *prima facie* case of infringement because

*briefly state reason – e.g., the patent claims do not arguably apply to the items alleged to be infringing, or the items in the shipment do not bear any relationship to the copyright – or mark – specified in your complaint; or, the ground on which you claim infringement does not constitute infringement in Egypt*

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This determination is based strictly on the evidence available in the record, including the information you provided to us does. It does not constitute an adjudication on the merits of the case, since the defendant has not yet had an opportunity to be heard, nor does it prevent you from requesting other relief to which you may be entitled.

If you disagree with this determination, you may request reconsideration by contacting the undersigned at \_\_\_\_\_ *(telephone, email address)* and stating in writing why you believe that your case *does* constitute a *prima facie* case of infringement. You may amend your complaint at that time. This case will be closed if we do not hear from you within \_\_\_\_\_ days. If you wish to appeal this decision, you must file an appeal within ten (10) business days stating the nature of the error that you believe has been made. Alternatively, you may appeal this decision to the courts, in which case you should provide us with a copy of the papers filed with the court.

Please let us know if we can be of further service.

Sincerely,

**FORM Letter 6 Complaint Rejected as non-Border Measures Case**

Date \_\_\_\_\_

Dear Mr./Ms. :

Thank you for your complaint no. \_\_\_\_\_. We have determined that your complaint is not one on which we can take action at this time because

\_\_\_\_\_ The IPR Border Measures Office has not been able to determine from your complaint whether it concerns intellectual property rights that are protected in Egypt. If you believe that it does, please specify the patent or registration number that is applicable and provide us with a copy of the document issued by an Egyptian agency or international authority. If the document is more than one page, it is sufficient to provide a copy of the face sheet or cover page, provided that sufficiently identifies the document and the owner of the intellectual property right.

\_\_\_\_\_ The IPR Border Measures Office has not been able to determine from your complaint that it concerns goods that are being imported into Egypt. If your complaint concerns goods that are in the domestic market, you may wish to contact the General Department for IPR in the Ministry of Supply, the courts, the police, or a private attorney.

\_\_\_\_\_ The IPR Border Measures Office has not been able to determine from your complaint that you have an interest in the intellectual property rights that are protected in Egypt. If you are not the party named on the document, please provide some indication of the basis on which you are entitled to act.

A photocopy or faxed copy of any documents will be satisfactory, provided that the document is legible. It is not necessary to provide a legalized or certified copy of these documents.

If you have not registered your intellectual property rights in Egypt, you may wish to do so. Enclosed with this letter is a page showing the names and addresses of the industrial property offices. In some cases, it is possible to protect your intellectual property through an international process. You may wish to obtain legal guidance in these matters.

No registration is required to protect trade secrets, trade dress, trade names, or copyright in Egypt. However, the IPR Border Measures Office only takes action in cases where there is established a *prima facie* case of infringement, and this requires more than a bare allegation of infringement. If you believe that your rights are protected in Egypt without the necessity of a registration, please provide us with a brief description of the basis for your intellectual property claim (e.g., author of work \_\_\_\_\_ (*identify work*) \_\_\_\_\_ that has been copied without permission in the following manner \_\_\_\_\_ (*describe basis for believing the items are copied*) \_\_\_\_\_; owner of trade secret misappropriated and how this misappropriation is related to the goods; owner of the trade name \_\_\_\_\_ which is infringed by goods bearing the mark \_\_\_\_\_; owner of trade dress in packaging used in \_\_\_\_\_ (*countries*) since (*date*) \_\_\_\_\_, which is infringed by packaging of goods in shipment in the following manner \_\_\_\_\_). You may amend your complaint by providing the information requested.

Since our determination is based strictly on evidence available in the record, including the information you provided to us, please help us to understand the basis for your complaint by providing the necessary information within the next \_\_\_\_\_ days. If we do not hear from you, we will close this case without prejudice to your ability to bring a complaint again. This does not constitute an adjudication on the merits of the case, since the defendant has not

yet had an opportunity to be heard, nor does it prevent you from requesting other relief to which you may be entitled.

If you have questions about this matter, please feel free to contact the undersigned at \_\_\_\_\_ (*telephone, email address*) \_\_\_\_\_ for clarification.

Please let us know if we can be of further service.

Sincerely,