

SAMOA

Arrangement of Provisions

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2010, No. 2

AN ACT to amend the Customs Act 1977 to ensure compliance with the World Trade Organisation requirements, and for related purposes.

[27th January 2010]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Customs Amendment Act 2010 and must be read together with and form part of the Customs Act 1977 (Principal Act).

(2) This Act commences on the date it is assented to by the Head of State.

2. Special provisions as to valuation of goods for assessment of duties – Section 132 of the Principal Act is repealed.

3. Insertion of new Part VIIIA – The Principal Act is amended by inserting the following after Part VIII:

**“PART VIIIA
BORDER PROTECTION MEASURES FOR
COPYRIGHT AND TRADEMARK GOODS**

203A. Interpretation - In this Part, unless the context otherwise requires:

“claimant” means a person giving notice under section 203B;

“copyright material” means material that is the subject of copyright;

“Court” means the Supreme Court of Samoa;

“infringing sign”, in relation to a trade mark, means a sign that is:

(a) identical to a trade mark in which respect notice has been given under section 203B and is used on or in physical relation to goods that are identical with goods in respect of which the trade mark is registered; or

(b) similar to such a trade mark and is used on or in physical relation to goods that are identical with or similar to goods in respect of which the trade mark is registered, if such use would be likely to deceive or confuse.

“infringement proceedings” means proceedings brought under section 26 of the Copyright Act 1998 or section 21 of the Trade Marks Act 1972;

“registered trade mark” has the same meaning as in section 2 of the Trade Marks Act 1972;

“trade mark” has the same meaning as in section 2 of the Trade Marks Act 1972.

203B. Notice requesting suspension of customs clearance of goods may be given to Comptroller - Any person may give written notice to the Comptroller that:

(a) claims that he or she is the copyright owner of copyright material specified in the notice or is the owner of a trade mark that is registered

in respect of goods specified in the notice, as the case may be; and

(b) requests the Comptroller to suspend the customs clearance procedure of any goods that the Comptroller has reasonable grounds to suspect -

(i) are goods that infringe the owner's copyright of copyright material; or

(ii) are goods, on or in physical relation to which an infringing sign is used, that are, or at any time come into the control of Customs.

203C. Contents of notice - A notice under section 203B must be in writing, specify the time period for which the notice is to be in force and be accompanied by the following:

- (a) prima facie evidence that the claimant is the owner of the copyright in copyright material or the owner of a registered trade mark;
- (b) a sufficiently detailed description of the copyright material or registered trade mark;
- (c) the prescribed fee (if any);
- (d) any other documents that may be prescribed.

203D. Comptroller must accept or decline notice-(1)
The Comptroller must, in relation to any notice given under section 203B,:

- (a) either -
 - (i) accept the notice if the claimant and the notice given by the claimant comply with the requirements of this section and any regulations that may be prescribed; or
 - (ii) decline the notice if the claimant or the notice given by the claimant does not comply with the requirements of this section and any regulations that may be prescribed; and
- (b) within a reasonable period of receiving the notice, advise the claimant whether the notice has been accepted or declined.

(2) The Comptroller may require the claimant to provide further information before deciding whether to accept or decline the notice.

203E. Duration of notice - A notice accepted under section 203D remains in force for the period specified in the notice unless:

- (a) it is revoked by the claimant by notice in writing;
- or
- (b) the Comptroller revokes the notice; or
- (c) the Court orders, in infringement proceedings, that the notice be revoked.

203F. Power to suspend customs clearance procedure - If the Comptroller accepts the notice under section 203D and the notice has not been revoked, the Comptroller may suspend the customs clearance of any goods which the Comptroller has reasonable grounds to suspect are goods with which an infringing sign are being imported.

203G. Security - The Comptroller may refuse to suspend the customs procedure in relation to the goods unless:

- (a) the claimant has deposited with the Comptroller, at the time notice is given under section 203B, a sum of money that, in the opinion of the Comptroller, is sufficient to reimburse Customs for the reasonable expenses it is likely to incur as a result of the suspension of the customs clearance procedure; or
- (b) the claimant has given security, to the satisfaction of the Comptroller, for the reimbursement of Customs for those expenses.

203H. Notification - The Comptroller must give to the claimant and the importer a written notification of the suspension as soon as possible after the Comptroller has suspended customs clearance of any goods.

203I. Inspection and examination of goods-(1) The Comptroller must allow the claimant and the importer to examine the goods for which clearance is suspended and to remove samples for examination, testing and analysis for the purposes of conducting infringement proceedings.

(2) This section does not affect any rule of law or enactment relating to the protection of confidential information.

203J. Detention and release of goods-(1) Goods for which the Comptroller has suspended customs clearance must be taken to such secure place as the Comptroller directs and detained until:

- (a) the Comptroller revokes the notice as a result of a review; or
- (b) the Comptroller is served with an order made by the Court that the goods be released; or
- (c) any infringement proceedings are abandoned; or
- (d) 10 working days have elapsed since notification was given under section 203H and the Comptroller has not been served with a notice of infringement proceedings.

(2) On the occurrence of any matters specified in subsection (1), the goods must be released to the importer or to such other person as the Court may order.

(3) The Comptroller may, in any particular case, extend the period referred to in subsection (1)(d) to 20 working days if the Comptroller considers it appropriate to do so in all the circumstances.

203K. Forfeiture of goods by consent-(1) Subject to subsection (2), the importer may, by written notice to the Comptroller, consent to the detained goods being forfeited to the Comptroller.

(2) If the importer gives notice under this section, before any infringement proceedings have been filed, the goods are forfeited to the Comptroller and must be disposed of as the Comptroller directs.

203L. Destruction of goods in relation to trade marks-(1) If, in proceedings under the Trade Marks Act 1972, the Court decides that any goods infringe an owner's rights in relation to a registered trade mark, the Court may make an order that the goods be destroyed or disposed of outside the channels of commerce in such a manner so as to avoid harm to the owner of the registered trade mark.

(2) In considering whether to make an order for destruction or disposal, the Court must consider the rights of interested third parties.

(3) The following are not permitted:

- (a) re-exporting the goods in the unaltered state;

- (b) other than in exceptional cases, simply removing the trade marks which have been affixed to counterfeit goods without authorisation; or
- (c) placing the goods under a different customs procedure.

203M. Review of Comptroller's decision-(1) The Comptroller must on request of the claimant or the importer review the Comptroller's decision under section 203D.

(2) The Comptroller may modify, revoke or confirm the notice.

203N. Small quantity of imports excluded - This Part does not apply to small quantities of goods of a non-commercial nature contained in a passenger's personal luggage or sent in small consignments.

203O. Protection of persons acting under this Part - The Comptroller or any customs officer or agent exercising a function or power under this Part or regulations made under this Part shall not incur any civil or criminal liability for any act or omission done honestly and without negligence.

203P. Compensation for wrongful detention - On application by the importer, the Court may order the claimant to pay the importer appropriate compensation for any injury caused to the importer through the wrongful detention of goods because of the failure of the claimant to file infringement proceedings.

203Q. Regulations -The Head of State, acting on the advice of Cabinet, may from time to time make regulations:

- (a) providing the forms of notices required under this Part;
- (b) providing for the times at which, and the manner in which, notices are to be given;
- (c) providing for the giving of information and evidence to the Comptroller;
- (d) prescribing fees required under this Part.”.

4. Obstructing Customs officer or interfering with Customs property – Section 214 of the Principal Act is amended by deleting section 214 and inserting the following:

“214. Obstructing Customs officer or interfering with Customs property - Every person who:

- (a) otherwise than by force, intentionally obstructs any Customs officer or authorised person acting in the execution of the officer’s duties;
- (b) intentionally interferes with any equipment, vehicle, craft, dog, communication system or other aid used by the Customs;
- (c) does any act with the intention of impairing the effectiveness of any equipment, vehicle, craft, dog, communication system or other aid used, or intended for use, by the Customs,

is guilty of an offence upon conviction and is liable to imprisonment for a term not exceeding three (3) months or to a fine not exceeding 100 penalty units or both.”.

**The Customs Amendment Act 2010 is administered
by the Ministry for Revenue.**

**Printed by the Clerk of the Legislative Assembly,
by authority of the Legislative Assembly.**