



UNTAET/ORD/2002/12
18 May 2002

EXECUTIVE ORDER NO. 2002/12

ON THE TRADE OF GOODS BEARING THE NATIONAL SYMBOLS OF THE DEMOCRATIC REPUBLIC OF EAST TIMOR

The Transitional Administrator,

Pursuant to the authority given him under United Nations Security Council Resolution 1272 (1999) of 25 October 1999, as reaffirmed in United Nations Security Council Resolution 1338 (2001) of 31 January 2001,

In accordance with UNTAET Regulation No. 1999/1 of 25 October 1999 on the authority of the Transitional Administration in East Timor and, in particular, the legislative and executive authority of the Transitional Administrator,

Recognizing that the Constitution of the Democratic Republic of East Timor approved by the Constituent Assembly on 22 March 2002 defines the national symbols of the Democratic Republic of East Timor (each, a "national symbol") as the flag (as described in Section 14 of the Constitution), the emblem and the national anthem (including the provisional designation of "Pátria, Pátria, Pátria, Timor -Leste a nossa nação" in accordance with Section 166 of the Constitution),

Pending the enactment of a law relating to the registration, licensing and use of trademarks, trade names and similar items of intellectual and industrial property rights within East Timor,

For the purpose of preserving the dignity of the national symbols through the establishment of a system for regulating the use of national symbols in a manner that protects the public interest of East Timor and provides for the realization of revenues therefrom,

Hereby orders the following:

Section 1

Prohibition on the Trade of Goods Bearing National Symbols

1.1 Effective immediately, no *goods* may be *traded* by any *person* within the area of East Timor unless specifically authorized by *permit* issued in accordance with this Order.

1.2 For purposes of the application of Section 1.1 and within this Order, the following terms, in addition to terms elsewhere defined herein, are defined as follows -

(a) “*goods*” means any goods, products, merchandise or other objects or materials bearing, displaying, embodying or representing a national symbol.

(b) “*permit*” means a permit to engage in the *trade of goods* issued in accordance with Section 2 of the present Order.

(c) “*person*” means

(i) a natural person;

(ii) a company or other juridical entity, wherever incorporated or formed, including but not limited to inter-governmental, non-governmental and charitable organizations;

(iii) a partnership, wherever formed;

(iv) a trust, wherever established;

(v) a business registered pursuant to UNTAET Regulation No. 2000/4 of 20 January 2000 on Registration of Businesses or UNTAET Regulation 2002/4 of 23 April 2002 on the Replacement of Regulation 2000/4 on Registration of Businesses;

(vi) a government (including the East Timor Public Administration) and its instrumentalities, including but not limited to its agencies for bi-lateral assistance; or

(vii) any other incorporated or unincorporated association or body.

(d) “*trade*” means to buy, sell, barter, exchange, trade or otherwise deal or transact for commercial purpose.

Section 2 Permit Procedure

2.1 The application for a *permit* shall be in writing to the Ministry of Finance in a form and according to procedures, including the payment of applicable fees, as may be prescribed by the Ministry of Justice in administrative instructions.

2.2 A *permit* may be issued by the Ministry of Finance for a single use, a specified number of uses or multiple uses with respect to one or more *goods*; provided, however, the Ministry of Finance may refuse to issue a *permit* only in compelling circumstances, the reasons for which shall be provided to the applicant in writing, which include, but are not limited to, the following:

(a) the intended use would, in the judgment of the Ministry of Finance impair or in any way adversely affect the dignity of the national symbols or the public interest of East Timor with respect thereto;

(b) the prior criminal conviction or pending charges against the applicant relating to unlawful use of intellectual or industrial property rights (e.g., counterfeiting, piracy and the like) or other felony in East Timor or any other jurisdiction; or

(c) the applicant having been subject to an insolvency proceeding as a debtor in East Timor or any other jurisdiction;

2.3 For purposes of Section 2.1 of the present Order, the fee payable in connection with a *permit* shall consist of –

(a) an application fee in the amount of US\$25; and

(b) a variable fee, payable in arrears, equal to 5% of the fair market value of the *goods* as determined by the Minister of Finance utilizing the most appropriate methods for determining such value as the same, together with associated accounting and record-keeping requirements, shall be prescribed by the Ministry of Finance in administrative instructions issued pursuant to the present Order.

2.4 A *permit* issued pursuant to Section 2.1 of the present Order shall remain valid not later than 30 September 2002.

2.5 Any failure by the holder of a *permit* or principal thereof to comply with all conditions and other requirements issued by the Ministry of Finance in connection therewith shall render the *permit* immediately void, and the *permit* shall be surrendered to the Ministry of Finance upon the notice of the Minister thereof.

Section 3 Enforcement

3.1 Failure to fully and immediately comply with this Order shall constitute an offense and shall result in its prompt enforcement by all lawful means available to the East Timor Public Administration, including its law enforcement and border services.

3.2 A *person* who commits an offense as set forth in Section 3.1 of this Order shall, in addition to all other applicable civil and criminal penalties, be subject to the following administrative penalties -

(a) the confiscation of all *goods traded* in violation of the present Order, together with implements of the *trade* of such *goods*, which confiscated items shall be forfeit to and shall become the property of the East Timor Public Administration upon the date 30 calendar days following its seizure unless proper authority to *trade* the *goods* shall have been established prior to such date.

(b) a penalty, as reasonably determined by the Minister of Finance in consideration of the circumstances of the offense, in the amount of –

(i) with respect to the *trade* of *goods* other than as permitted in accordance with the present Order, between US\$100 and US\$10,000.

(ii) with respect to the *trade* of *goods* at any time after 30 September 2002, between US\$10 and US\$1,000.

3.3 Items confiscated pursuant to Section 3.2(a) of the present Order shall remain in the custody of the Transitional Administration until –

(a) released following a determination of the proper authority to possess the same in accordance with the review procedures of Section 4 of the present Order or as may otherwise be provided in any successor law relating to the same, or

(b) determined to be forfeit to the East Timor Public Administration in accordance with the confiscation and forfeiture provisions hereof, including the application of any relevant review process, or otherwise contained in any successor law relating to the use or possession of the same;

provided, however, samples of such items may be taken and reasonably consumed for the purpose of examining or analyzing the same or for evidence in judicial proceedings related thereto, and samples not expended or consumed in connection with such examination or analysis or in the conduct of judicial proceedings shall be returned to the store thereof as provided in this Section upon the completion of such examination, analysis or proceeding.

3.4 The provisions of this Section 3 shall be in addition to, and shall in no way preclude, substitute for or intervene with respect to the prosecution of any criminal proceeding or the imposition of any criminal sanctions appertaining to the unauthorized use of trademarks, trade names and similar items of intellectual and industrial property rights with respect to the national symbols.

Section 4 Review Procedure

4.1 A *person* affected by the present Order and seeking a review of the Minister of Finance with respect to the refusal of any *permit* application pursuant to Section 2.2 of the present Order, the valuation of *goods* for purposes of the fees payable in connection with the *permit* as provided in Section 2.3, the revocation of a *permit* in accordance with Section 2.5 or the imposition of penalties pursuant to Section 3.2, may, within seven calendar days of the date of such decision, appeal such decision to the tribunal for the review of administrative matters of the East Timor Public Administration or, pending the establishment thereof, the District Court for the District of Dili. The decision of the tribunal for the review of administrative matters of the East Timor Public Administration or, pending its establishment, the District Court for the District of Dili shall be final.

4.2 In the event that, as a result of the application of the review procedures set forth in this Section 4 –

(a) the *permit* shall have been determined to be issuable in accordance with Section 2.2 of the present Order, the Ministry of Finance shall be directed to issue such *permit*;

(b) the value of the *goods* shall have been established to be other than that determined in accordance with Section 2.3(b) of the present Order, the value so established shall be the value for purposes of calculating the fees payable as provided in Section 2.1;

(c) the compliance by the holder of a *permit* or principal thereof with all conditions and other requirements issued by the Ministry of Finance in connection

therewith, the *permit* shall be immediately returned to the holder; or

(d) the proper authority to *trade goods* shall have been established, the pursuant to this Section 4, the confiscated items shall be released to the possession of such *person*;

provided, however, the East Timor Public Administration shall in no event be liable to any *person* for any claim, suit, demand or liability of any kind, including costs or expenses, arising out of or in any way associated with the determinations subsequently altered in any way in accordance with the review provisions of this Section 4.

4.3 The burden of proof for purposes of the review proceedings set forth in this Section 4 shall at all times be upon the *person* initiating such review.

Section 5 Accrual of Fees and other Revenues

All fees received in accordance with Section 2.1 of the present Order, all fines arising under Section 3.2(b) of the present Order and the proceeds of all confiscated items forfeit to the East Timor Public Administration shall accrue to the benefit of, and shall be delivered to, the Banking and Payments Authority of East Timor for deposit into the Consolidated Fund of East Timor (as such term is defined in UNTAET Regulation No. 2000/1).

Section 6 Effective Date

This Order shall enter into force upon signature and will be published in the Official Gazette of East Timor, pursuant to UNTAET Regulation No. 1999/4.

Sergio Vieira de Mello
Transitional Administrator