

Regulation of the P. R. China on the customs protection of IP rights

PART ONE GENERAL PROVISIONS

Article 1 These Regulations are formulated in accordance with the PRC, Customs Law in order to implement customs protection of intellectual property rights, promote foreign economic trade and technological and cultural exchange, and safeguard social interests.

Article 2 For the purposes of these Regulations, “customs protection of intellectual property rights” refers to the implementation of protection by customs of the exclusive rights to use a trademark, copyrights and the rights related thereto, and patent rights that are related to import and export goods and that are protected by PRC laws and administrative regulations (Intellectual Property Rights).

Article 3 The State prohibits the import and export of goods that infringe upon Intellectual Property Rights.

Customs shall implement protection of Intellectual Property Rights and exercise the relevant powers stipulated in the PRC, Customs Law in accordance with the provisions of relevant laws and these Regulations.

Article 4 Owners of Intellectual Property Rights that request customs to implement protection of Intellectual Property Rights shall submit an application to customs for adoption of protective measures.

Article 5 Consignees of import goods or their agents, and consignors of export goods or their agents shall truthfully declare to customs the details of Intellectual Property Rights related to the import or export goods, and shall submit the relevant supporting documents.

Article 6 When implementing protection of Intellectual Property Rights, customs shall maintain the confidentiality of the trade secrets of the related parties.

PART TWO RECORD FILING OF INTELLECTUAL PROPERTY RIGHTS

Article 7 An owner of Intellectual Property Rights may apply to the General Administration of Customs for record filing of his Intellectual Property Rights according to the provisions hereof. To apply for record filing, an application form shall be submitted. An application form shall include the following particulars:

1. the name or personal name, place of registration or nationality, etc. of the owner of the Intellectual Property Rights;
2. the name, details and the relevant information of the Intellectual Property Rights;
3. the details of the exercise of the Intellectual Property Rights license;
4. the name, place of origin, customs at the point of entry/exit, importers and exporters, major characteristics, and prices, etc. of the goods of which the Intellectual Property Rights are lawfully exercised by the owner of Intellectual Property Rights; and
5. the manufacturers, importers and exporters, customs at the point of entry/exit, major characteristics, and prices, etc. of goods that are known to have infringed upon Intellectual Property Rights.

Where there are supporting documents for the contents of the application form specified in the preceding paragraph, the owner of Intellectual Property Rights shall attach the supporting documents.

Article 8 The General Administration of Customs shall, within 30 working days of the date of receipt of all application documents, render a decision on whether to grant approval for record filing, and shall notify the applicant in writing. Where approval for record filing is not granted, the reasons therefore shall be stated.

The General Administration of Customs shall not grant approval for record filing in any of the following circumstances:

1. the application documents are incomplete or invalid;
2. the applicant is not the owner of the Intellectual Property Rights; or

3. the Intellectual Property Rights are no longer protected by laws or administrative regulations.

Article 9 If customs discovers that an owner of Intellectual Property Rights that applies for record filing of Intellectual Property Rights has not provided the relevant details or documents truthfully, the General Administration of Customs may revoke its filed record.

Article 10 A filed record for customs protection of Intellectual Property Rights shall be effective as of the date on which the General Administration of Customs grants approval for record filing, and shall be valid for 10 years.

Where the Intellectual Property Rights are valid, the owner of the Intellectual Property Rights may, within six months prior to the expiration of the term of validity of the filed record for customs protection of Intellectual Property Rights, apply to the General Administration of Customs for an extension of the filed record. The term of validity of each extension of a filed record shall be 10 years.

Where no application for extension has been made upon the expiration of the term of validity of a filed record for customs protection of Intellectual Property Rights, or the Intellectual Property Rights are no longer protected by laws or administrative regulations, the filed record for customs protection of Intellectual Property Rights shall immediately become void.

Article 11 Where there is a change in the details of a filed record of Intellectual Property Rights, the owner of the Intellectual Property Rights shall, within 30 working days of the date on which the change occurs, carry out the amendment or cancellation procedures with the General Administration of Customs.

Where the owner of the Intellectual Property Rights does not apply to the amendment or cancellation procedures in accordance with the preceding paragraph so as to seriously affect other's lawful import or export and the Customs supervision according to law, the General Administration of Customs can remove the record upon the application of the stakeholders or take the initiative to do so.

PART THREE APPLICATION FOR IMPOUNDMENT OF GOODS SUSPECTED OF INFRINGING UPON RIGHTS, AND THE HANDLING THEREOF

Article 12 Where an owner of Intellectual Property Rights discovers that goods suspected of infringing upon rights are about to be imported or exported, he may submit an application for impoundment of goods suspected of infringing upon rights to the customs of the place where the goods are to enter into, or exit from, China.

Article 13 Where an owner of Intellectual Property Rights requests customs to impound goods suspected of infringing upon rights, he shall submit an application form and the relevant supporting documents, and shall provide evidence that is sufficient to prove that the infringement clearly exists.

An application form shall include the following main particulars:

1. the name or personal name, place of registration or nationality, etc. of the owner of the Intellectual Property Rights;
2. the name, details and the relevant information of the Intellectual Property Rights;
3. the names of the consignees and consignors of the goods suspected of infringing upon rights;
4. the name and specifications, etc. of the goods suspected of infringing upon rights; and
5. the port by which, the time at which and the means of transportation by which, the goods suspected of infringing upon rights may enter into, or exit from, China.

Where the goods suspected of infringing upon rights are suspected of infringing upon Intellectual Property Rights that are filed for record, the application form shall also include the customs record number.

Article 14 Where an owner of Intellectual Property Rights requests customs to impound goods suspected of infringing upon rights, he shall provide to customs

a guarantee equal to the value of the goods for compensation of any loss that may be incurred by the consignee or the consignor due to improper application, and for payment of fees for the storage, custody and disposal, etc. of the goods after they are impounded by customs. Where an owner of Intellectual Property Rights pays the fees for storage and custody directly to the storage provider, such fees shall be deducted from the guarantee. The specific procedures shall be formulated by the General Administration of Customs.

Article 15 Where an owner of Intellectual Property Rights that applies for impoundment of goods suspected of infringing upon rights satisfies the provisions of Article 13 hereof and provides a guarantee in accordance with Article 14 hereof, customs shall impound the goods suspected of infringing upon rights, notify the owner of Intellectual Property Rights in writing, and deliver a certificate of impoundment by customs to the consignee or consignor.

Where an owner of Intellectual Property Rights that applies for impoundment of goods suspected of infringing upon rights does not satisfy the provisions of Article 13 hereof or has not provided a guarantee in accordance with Article 14 hereof, customs shall reject the application and notify the owner of Intellectual Property Rights in writing.

Article 16 Where customs discovers import or export goods that are suspected of infringing upon Intellectual Property Rights that are filed for record, it shall notify the owner of the Intellectual Property Rights immediately in writing. Where, within three working days of the date of delivery of the notification, the owner of the Intellectual Property Rights submits an application according to Article 13 hereof and provides a guarantee according to Article 14 hereof, customs shall impound the goods suspected of infringing upon rights, notify the owner of the Intellectual Property Rights in writing, and deliver a certificate of impoundment by customs to the consignee or consignor. Where the owner of the Intellectual Property Rights fails to submit an application or provide a guarantee within the time limit, customs may not impound the goods.

Article 17 An owner of Intellectual Property Rights and the consignee or consignor may inspect the relevant goods upon the approval of customs.

Article 18 Where the consignee or consignor considers that his goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, he shall submit a written explanation to customs and attach the relevant evidence.

Article 19 Where a consignee or consignor of goods suspected of infringing upon patent rights considers that his import or export goods have not infringed upon patent rights, he may, after providing a guarantee equal to the value of the goods, request customs to release his goods. If the owner of Intellectual Property Rights fails to institute an action at a people's court within a reasonable time period, customs shall return the guarantee.

Article 20 If, after customs has discovered import or export goods suspected of infringing upon Intellectual Property Rights that are filed for record and has notified the owner of the Intellectual Property Rights, the owner of the Intellectual Property Rights requests customs to impound the goods suspected of infringing upon rights, customs shall, within 30 working days of the date of impoundment, investigate and confirm whether the impounded goods suspected of infringing upon rights have infringed upon Intellectual Property Rights. If it cannot confirm an infringement, it shall notify the owner of the Intellectual Property Rights immediately in writing.

Article 21 Where customs conducts an investigation into the impounded goods suspected of infringing upon rights and requests the assistance of the department in charge of Intellectual Property Rights, the relevant department in charge of Intellectual Property Rights shall provide assistance.

Where the department in charge of Intellectual Property Rights requests customs to provide assistance in the handling of rights infringement cases involving import and export goods, customs shall provide assistance.

Article 22 Where customs conducts an investigation into the impounded goods suspected of infringing upon rights and the relevant details, the owner of Intellectual Property Rights and the consignee or consignor shall coordinate with the investigation.

Article 23 An owner of Intellectual Property Rights may, after applying to customs for adoption of protective measures, apply to the people's court for an order of cessation of the infringing act or preservation of property for the impounded goods suspected of infringing upon rights prior to the institution of action in accordance with the provisions of the PRC, Trademark Law, the PRC, Copyright Law or the PRC, Patent Law.

Customs that receives the notice to assist in execution of an order of cessation of an infringing act or preservation of property from the people's court shall provide assistance.

Article 24 Customs shall release the impounded goods suspected of infringing upon rights in any of the following circumstances:

1. customs impounds goods suspected of infringing upon rights according to Article 15 hereof, and has not received the notice to assist in execution from the people's court within 20 working days from the date of impoundment;

2. customs impounds goods suspected of infringing upon rights according to Article 16 hereof, and has not received the notice to assist in execution from the people's court within 50 working days from the date of impoundment, and cannot confirm that the impounded goods suspected of infringing upon rights has infringed upon Intellectual Property Rights after investigation;

3. the consignee or consignor of the goods suspected of infringing upon patent rights requests customs to release his goods after providing a guarantee equal to the value of the goods; or

4. customs considers that the consignee or consignor has sufficient evidence to prove that his goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property rights.

Article 25 Where customs impounds goods suspected of infringing upon rights according to the provisions hereof, the owner of the Intellectual Property Rights shall pay the relevant fees for storage, custody and disposal, etc. Where the owner of the Intellectual Property Rights has not paid the relevant fees,

customs may deduct such fees from the guarantee he provides to customs, or request the guarantor to perform the relevant guarantee liability.

Where goods suspected of infringing upon rights are confirmed as having infringed upon Intellectual Property Rights, the owner of the Intellectual Property Rights may include the relevant fees for storage, custody and disposal, etc. he has paid in the reasonable expenditure paid for cessation of the infringing acts.

Article 26 Where customs discovers a case suspected of a criminal offence during implementation of protection of Intellectual Property Rights, it shall hand over the case to the public security authority according to law for handling.

PART FOUR LEGAL LIABILITY

Article 27 Where impounded goods suspected of infringing upon rights are confirmed as having infringed upon Intellectual Property Rights after investigation by customs, customs shall confiscate the goods.

After customs has confiscated the goods that have infringed upon Intellectual Property Rights, it shall notify the owner of the Intellectual Property Rights in writing of the relevant details of such goods.

Where confiscated goods that have infringed upon Intellectual Property Rights can be used for public welfare, customs shall transfer the goods to the relevant public welfare organizations to be used for public welfare. Where the owner of the Intellectual Property Rights wishes to acquire the goods, customs may transfer the goods to the owner of the Intellectual Property Rights for compensation. Where confiscated goods that has infringed upon Intellectual Property Rights cannot be used for public welfare and the owner of the Intellectual Property Rights does not wish to acquire the goods, customs may auction off the goods according to law after removing the infringing characteristics. Where the infringing characteristics cannot be removed, customs shall destroy the goods.

Article 28 Where articles carried or sent by mail by individuals into or out of China exceed the amount for personal use or the reasonable amount and infringe

upon the Intellectual Property Rights stipulated in Article 2 hereof, customs shall confiscate such articles.

Article 29 Where, after customs has accepted an application for record filing of protection of Intellectual Property Rights and for adoption of protective measures for Intellectual Property Rights, an owner of Intellectual Property Rights cannot provide precise details and as a result, the goods infringing upon rights are not discovered, or the protective measures are not adopted in a timely manner or effectively, the owner of the Intellectual Property Rights shall bear the liability himself.

Where, after an owner of Intellectual Property Rights has requested customs to impound goods suspected of infringing upon rights, customs cannot confirm whether the impounded goods suspected of infringing upon rights has infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, or the people's court rules that the goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, the owner of Intellectual Property Rights shall be liable for compensation according to law.

Article 30 Where the import or export of goods that infringe upon Intellectual Property Rights constitutes a criminal offence, criminal liability shall be pursued according to law.

Article 31 Where the personnel of customs are derelict in their duties, abuse their authority or practice graft in their implementation of protection of Intellectual Property Rights, and a criminal offence is constituted, their criminal liability shall be pursued according to law. Where the same is insufficient to constitute a criminal offence, they shall be subjected to administrative penalty according to law.

PART FIVE SUPPLEMENTARY PROVISIONS

Article 32 Where an owner of Intellectual Property Rights handles record filing of his Intellectual Property Rights with the General Administration of Customs, he shall pay the fee for record filing in accordance with the relevant State provisions.

Article 33 These Regulations shall be implemented as of 1 March 2004. The PRC, Customs Protection of Intellectual Property Rights Regulations promulgated by the State Council on 5 July 1995 shall be simultaneously repealed.