

**Regulations of the People's Republic of China
on Customs Protection of Intellectual Property Rights
(2018 Revision)**

Chapter 1 General Principles

Article 1 These Regulations are formulated pursuant to the Customs Law of the People's Republic of China for the purposes of enforcing Customs protection of intellectual property rights, promoting economic trade with foreign countries and scientific, technological and cultural exchange, and safeguarding public interest.

Article 2 Customs protection of intellectual property rights referred to in these Regulations shall mean the protection implemented by the Customs on the rights to the exclusive use of trademarks, copyrights and copyright-related rights, and patent rights (hereinafter referred to collectively as the "Intellectual Property Rights") in respect of the imports and exports under the protection of the laws and administrative regulations of the People's Republic of China.

Article 3 Imports and exports that have infringed upon intellectual property rights shall be prohibited by the State.

The Customs shall implement protection of intellectual property rights pursuant to the provisions of the relevant laws and these Regulations, and exercise the relevant powers stipulated by the Customs Law of the People's Republic of China.

Article 4 Where an intellectual property rights holder requests the Customs to enforce protection of intellectual property rights, the intellectual property rights holder shall submit an application to the Customs for adoption of protection measures.

Article 5 The consignee of imports or its agent, and the consignor of exports or its agent shall truthfully declare to the Customs the details of intellectual property rights relating to the imports and exports, and submit the relevant proof documents pursuant to the regulations of the State.

Article 6 When enforcing protection of intellectual property rights, the Customs shall keep commercial secrets of the parties concerned confidential.

Chapter 2 Filing of Intellectual Property Rights

Article 7 The intellectual property rights holders may, pursuant to the provisions of these Regulations, file their intellectual property rights with the General Administration of Customs

for record; when applying for filing, an application form shall be submitted. The application form shall include the following contents:

- (1) Title or name, place of registration, nationality etc. of the intellectual property rights holder;
- (2) Name, content and relevant information of the intellectual property rights;
- (3) Status on licensing of intellectual property rights;
- (4) Name and place of origin of the goods subject to lawful exercise of intellectual property rights by the intellectual property rights holder, the Customs at the port of entry or exit, importers and exporters, main characteristics, price etc.; and
- (5) Manufacturers of the goods that are known to have infringed upon intellectual property rights, importers and exporters, the Customs at the port of entry or exit, main characteristics, price etc.

Where there is any certification document for the contents of the application form stipulated in the preceding paragraph, the intellectual property rights holder shall enclose the certification document to the said application form.

Article 8 The General Administration of Customs shall decide on approval or non-approval of the application for filing within 30 working days from the date of receipt of all application documents and notify the applicant in writing; where the application for filing is not approved, the reason shall be stated.

Under any of the following circumstances, the General Administration of Customs shall not approve the application for filing:

- (1) Where the application documents are incomplete or invalid;
- (2) Where the applicant is not the intellectual property rights holder; or
- (3) Where the intellectual property rights is no longer protected by the laws and administrative regulations.

Article 9 Where the Customs discovers that the intellectual property rights holder failed to provide the relevant information or documents truthfully in the application for filing of intellectual property rights, the General Administration of Customs may cancel the filing.

Article 10 The filing for Customs protection of intellectual property rights shall come into effect from the date of approval of the application for filing by the General Administration of Customs, and shall be valid for 10 years.

Where the intellectual property rights are valid, the intellectual property rights holder may apply to the General Administration of Customs for renewal of filing, within six months prior

to expiry of the validity of the filing for Customs protection of intellectual property rights. The term of the validity of each renewed filing shall be 10 years.

Where an application for renewal is not made upon expiry of the validity of the filing for Customs protection of intellectual property rights, or the intellectual property rights is no longer protected by the laws and administrative regulations, the filing for Customs protection of intellectual property rights shall forthwith become invalid.

Article 11 Where there is any change in the filed information for the intellectual property rights, the intellectual property rights holder shall complete the formalities for the change or cancellation of the filing with the General Administration of Customs within 30 working days from the date of occurrence of the change.

Where the intellectual property rights holder failed to complete the formalities for the change or cancellation pursuant to the provisions of the preceding paragraph, thus causing severe impact on the legitimate import or export by other party or parties or on the performance of the regulatory duties by the Customs pursuant to the law, the General Administration of Customs may revoke the relevant filing on the basis of the application of the relevant stakeholder(s), or may voluntarily revoke the relevant filing.

Chapter 3 Application for Detaining Suspected Infringing Goods and Disposal Thereof

Article 12 Where the intellectual property rights holders find that the suspected infringing goods are about to be imported or exported, they may apply to the Customs at the port of entry or exit of the goods for detaining such suspected infringing goods.

Article 13 Where the intellectual property rights holder requests for Customs detention of the suspected infringing goods, they shall submit an application form and the relevant certification documents, and provide evidence that is sufficient to prove the obvious existence of such infringement.

The application form shall include the following main contents:

- (1) Title or name, place of registration, nationality etc. of the intellectual property rights holder;
- (2) Name, content and relevant information of the intellectual property rights;
- (3) Name of the consignee and consignor of the suspected infringing goods;
- (4) Name, specifications etc. of the suspected infringing goods; and
- (5) Likely port of entry or exit, time of entry or exit, transportation vehicles etc. of the suspected infringing goods.

Where the suspected infringing goods are suspected of infringing upon intellectual property rights which have been filed with the Customs, the application form shall also include the Customs filing number.

Article 14 Where the intellectual property rights holder requests for Customs detention of the suspected infringing goods, they shall provide the Customs a guarantee which does not exceed the value of the goods, to be used as compensation against the losses caused to the consignor or consignee due to the improper application, and as the fees for warehousing, custody and disposal of goods incurred by the Customs for detention of the goods; where the intellectual property rights holders directly pay the fees for warehousing and custody to the warehouseman, such amount shall be deducted from the guarantee. The specific measures shall be formulated by the General Administration of Customs.

Article 15 Where the application of the intellectual property rights holder for detaining the suspected infringing goods complies with the provisions of Article 13 of these Regulations, and the intellectual property rights holder provides the guarantee pursuant to the provisions of Article 14 of these Regulations, the Customs shall detain the suspected infringing goods and notify the intellectual property rights holder in writing and deliver the Customs detention notice to the consignee or consignor.

Where the application of the intellectual property rights holder for detaining the suspected infringing goods does not comply with the provisions of Article 13 of these Regulations, or the intellectual property rights holder failed to provide the guarantee pursuant to the provisions of Article 14 of these Regulations, the Customs shall reject the application and notify the intellectual property rights holder in writing.

Article 16 In case of discovery of imports or exports suspected of infringing upon the intellectual property rights filed with the Customs, the Customs shall forthwith notify the intellectual property rights holders in writing. Where the intellectual property rights holders submit an application pursuant to the provisions of Article 13 of these Regulations within three working days from the date of service of the notice, and provide a guarantee pursuant to the provisions of Article 14 of these Regulations, the Customs shall detain the suspected infringing goods, notify the intellectual property rights holders in writing, and serve the Customs detention notice on the consignee or consignor. Where the intellectual property rights holders fail to submit the application within the stipulated period or provide the guarantee, the Customs shall not detain the goods.

Article 17 Upon consent by the Customs, the intellectual property rights holder and the consignee or consignor may check the relevant goods.

Article 18 Where the consignee or consignor asserts that the goods do not infringe upon the intellectual property rights of the intellectual property rights holders, he/she shall submit a written explanation to the Customs and attach the relevant evidence.

Article 19 Where the consignee or consignor of goods suspected of patent infringement asserts that the imports or exports thereof do not infringe upon the patent, the consignee or consignor may, upon provision of a guarantee equivalent to the value of the goods to the Customs, request that the Customs release such goods. Where the intellectual property rights holder failed to file a lawsuit with a People's Court within a reasonable time limit, the Customs shall return the guarantee.

Article 20 Where the Customs discover imports or exports which are suspected of infringing upon intellectual property rights filed with the Customs and notifies the intellectual property rights holder,

if the intellectual property rights holder requests for Customs detention of the suspected infringing goods, the Customs shall carry out an investigation and determination of whether the detained suspected infringing goods infringe upon the intellectual property rights within 30 working days from the date of detention; where it is impossible to determine, the Customs shall issue a written notice forthwith to the intellectual property rights holder.

Article 21 Where the Customs, during investigation of detained suspected infringing goods, requests for assistance from the authorities in charge of the intellectual property rights, the relevant authorities in charge of the intellectual property rights shall render assistance.

Where the authorities in charge of the intellectual property rights request for assistance from the Customs in handling an infringement case involving imports or exports, the Customs shall render assistance.

Article 22 The intellectual property rights holder and the consignee or consignor shall cooperate with the Customs in an investigation on the detained suspected infringing goods and the relevant circumstances.

Article 23 Upon submission of an application for adoption of protection measures to the Customs, the intellectual property rights holders may apply to a People's Court for adoption of measures to stop the infringement or preserve property in respect of the detained suspected infringing goods, in accordance with the provisions of the Trademark Law of the People's Republic of China, the Copyright Law of the People's Republic of China, the Patent Law of the People's Republic of China or other relevant laws.

The Customs shall render assistance, upon receipt of the enforcement assistance notice from the People's Court to stop infringement or preserve property.

Article 24 Under any of the following circumstances, the Customs shall release the detained suspected infringing goods:

(1) Where the Customs detains the suspected infringing goods pursuant to the provisions of Article 15 of these Regulations, but does not receive the enforcement assistance notice from the People's Court within 20 working days from the date of detention;

(2) Where the Customs detains the suspected infringing goods pursuant to the provisions of Article 16 of these Regulations, but does not receive the enforcement assistance notice from the People's Court within 50 working days from the date of detention, and upon investigation, the Customs is unable to determine that such detained suspected infringing goods has infringed upon the intellectual property rights;

(3) After the consignee or consignor of goods suspected of patent infringement provides a guarantee equivalent to the value of the goods to the Customs, and requests the Customs to release such goods;

(4) Where the Customs deems that the consignee or consignor has sufficient evidence to prove that the goods do not infringe upon the intellectual property rights of the intellectual property rights holders; or

(5) Before the Customs determines the detained suspected infringing goods as infringing goods, the intellectual property rights holders shall withdraw the application for detaining the suspected infringing goods.

Article 25 Where the Customs detains the suspected infringing goods pursuant to the provisions of these Regulations, the intellectual property rights holder shall pay the fees relating to warehousing, custody and disposal. Where the intellectual property rights holder failed to pay the relevant fees, the Customs may deduct the same from the guarantee provided by the intellectual property rights holder to the Customs, or request for the performance of the relevant guarantee responsibilities by the guarantor.

Where the suspected infringing goods are found to have infringed upon the intellectual property rights, the intellectual property rights holder may include the fees relating to warehousing, custody and disposal paid by them, into the reasonable expenses paid thereby to stop the infringement acts.

Article 26 Where the Customs discover suspected criminal cases in the course of enforcing protection of intellectual property rights, the Customs shall forward the cases to the public security organ pursuant to the law for handling.

Chapter 4 Legal Liabilities

Article 27 Where the detained suspected infringing goods are found to have infringed upon the intellectual property rights upon investigation by the Customs, the Customs shall confiscate such goods.

Upon confiscation of the goods that have infringed upon the intellectual property rights, the Customs shall notify the intellectual property rights holder in writing of the relevant information on such goods.

Where the confiscated goods that infringe upon the intellectual property rights may be used for social public welfare, the Customs shall transfer such goods to the relevant public welfare organizations for use in social public welfare; where the intellectual property rights holder intends to purchase such goods, the Customs may make a compensated transfer of the goods to the intellectual property rights holder. Where the confiscated goods that infringe upon the intellectual property rights cannot be used for social public welfare and the intellectual property rights holders do not intend to purchase the goods, the Customs may auction off the goods pursuant to the law upon eliminating the infringement characteristics; however, imported counterfeit trademark goods are not allowed to enter into commercial channels by simply removing the trademark labels on the goods, except for special circumstances ; where it is impossible to eliminate the infringement characteristics, the Customs shall destroy the goods.

Article 28 Upon acceptance of the application for filing of intellectual property rights for Customs protection and for adoption of intellectual property rights protection measures, where the Customs is unable to discover goods which have infringed upon the intellectual property rights or unable to adopt protection measures promptly or effectively due to failure of the intellectual property rights holder to provide accurate information, the intellectual property rights holder shall bear the liabilities on its own.

Where the intellectual property rights holder requests for Customs detention of the suspected infringing goods, if the Customs is unable to determine that the detained suspected infringing goods have infringed upon the intellectual property rights of the intellectual property rights holder, or if the People's Court rules that such goods have not infringed upon the intellectual property rights of the intellectual property rights holder, the intellectual property rights holder shall bear compensation liabilities pursuant to the law.

Article 29 Where the imports or exports infringe upon the intellectual property rights and constitute a criminal offence, criminal liability shall be pursued in accordance with the law.

Article 30 Where a Customs officer is guilty of dereliction of duties, abusing official powers and corruption in the course of enforcing intellectual property rights protection, if it constitutes a criminal offence, his/her criminal liability shall be pursued in accordance with the law; where the case does not constitute a criminal offence, administrative punishment shall be imposed pursuant to the law.

Chapter 5 Supplementary Provisions

Article 31 Where the goods brought into and out of China by individuals or by post exceed the reasonable quantity for self-use and infringe upon the intellectual property rights as stipulated in Article 2 of these Regulations, the goods shall be dealt with as infringing goods.

Article 32 These Regulations shall be effective from 1 March 2004. The Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights promulgated by the State Council on 5 July 1995 shall be repealed simultaneously.