

Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights (2018 Amendment PKULAW Version)[Effective]
中华人民共和国知识产权海关保护条例(2018 修正) [现行有效]

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Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights

(Promulgated by the Order No.395 of the State Council of the People's Republic of China on December 2, 2003; revised according to the Decision of the State Council on Amending the Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights on March 24, 2010; and amended in accordance with the Decision of the State Council to Amend and Repeal Certain Administrative Regulations on March 19, 2018)

Chapter I General Provisions

Article 1 The present Regulation is formulated in accordance with the "Customs Law of the People's Republic of China" in order to carry out the customs protection of intellectual property rights, to promote economic and trade contacts as well as scientific, technological and cultural contacts with foreign countries, and to maintain public benefits.

Article 2 Customs protection of intellectual property rights mentioned in the present Regulation means the protection practiced by the customs of the rights to exclusive use of trademarks, copyrights and copyright-related rights, patent rights (hereinafter uniformly referred to as intellectual property rights), which are related to imported and exported goods and protected by the laws and administrative regulations of the People's Republic of China.

Article 3 The State prohibits the import and export of goods infringing upon intellectual property rights.

The customs shall, in accordance with relevant laws and the present Regulation, practice protection of intellectual property rights, and exercise the relevant powers prescribed in the "Customs Law of the People's Republic of China".

Article 4 Where an intellectual property right holder requests the customs to practice protection of his intellectual property rights, he shall apply to the customs for taking protective measures.

Article 5 A consignee of imported goods or his agent, or a consigner of exported goods or his agent shall, in accordance with the provisions of the State, truthfully declare to the customs the status of his intellectual property rights related to the imported or exported goods, and shall submit relevant documents of proof.

Article 6 The customs shall, when practicing protection of intellectual property rights, keep the commercial secrets of the relevant parties.

Chapter II Archival Filing of Intellectual Property Rights

Article 7 An intellectual property right holder may, in accordance with the present Regulation, apply to the General Administration of Customs for archival filing of his intellectual property rights; if applying for archival filing, he shall submit an application letter, which shall include the following contents:

- (1) the intellectual property right holder's name, and his place of registration or his nationality, etc.;
- (2) the name and contents of as well as the relevant information on the intellectual property;
- (3) the status of permission to exercise the intellectual property;
- (4) the name and place of origin of the goods for which the intellectual property right holder lawfully exercises the intellectual property, the customs of entry or exit, the importer and exporter, the main features and the price, etc. of such goods;
- (5) the manufacturer, importer and exporter of the goods which are known to have infringed upon the intellectual property, the customs of entry or exit, the importer and exporter, the main features and the price, etc. of such goods.

The intellectual property right holder shall attach a document of proof, if any, contained in the contents of the application letter in the preceding paragraph.

Article 8 The General Administration of Customs shall, within 30 working days as of receiving all the application documents, make a decision on whether or not permitting the archival filing, and notify the applicant in writing; if it does not permit the archival filing, it shall state the reason thereof.

In the event of any of the following circumstances, the General Administration of Customs shall not permit the archival filing:

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

Article 9 Where the customs finds that an intellectual property right holder who applies for archival filing for his intellectual property right does not truthfully provide the relevant information or documents, the General Administration of Customs may cancel the archival filing.

Article 10 The archival filing of customs protection of an intellectual property right shall become valid as of the day when the General Administration of Customs permits the archival filing, with the validity period to be 10 years.

Where an intellectual property right is valid, the right holder may, within 6 months prior to the expiry of the validity period for the archival filing of customs protection of the intellectual property right, apply to the General Administration of Customs for renewal of the archival filing. The validity period for the renewed archival filing of each time shall be 10 years.

Where an intellectual property right holder does not apply for renewal at the expiry of the validity period for archival filing of the customs protection of the intellectual property right, or the

intellectual property right is no longer protected by laws or administrative regulations, the said archival filing shall be invalidated immediately.

Article 11 Where the information on archival filing of an intellectual property is changed, the intellectual property right holder shall, within 30 working days from such change, go through the formalities for modification or deregistration of the archival filing at the General Administration of Customs.

Where an intellectual property right holder fails to go through the formalities for modification or deregistration according to the preceding paragraph and causes serious impacts on the legal import and export by others or the performance of duties by the customs according to law, the General Administration of Customs may cancel the relevant archival filing upon the application by the relevant interested party or initiatively.

Chapter III Application for and Handling of Detainment of Suspected Infringing Goods

Article 12 Where an intellectual property right holder finds that any suspected infringing goods are about to be imported or exported, he may file an application to the customs at place of entry or exit for detainment of such goods.

Article 13 Where an intellectual property right holder requests the customs to detain any suspected infringing goods, he shall submit an application letter and relevant documents of proof, and provide evidence sufficient to prove the obvious existence of the infringement facts as well. An application letter shall include the following main contents:

- (1) the intellectual property right holder's name, and his place of registration or his nationality, etc.;
- (2) the intellectual property's name, contents, and relevant information;
- (3) the names of both the consignee and the consigner of the suspected infringing goods;
- (4) the name and specifications, etc. of the suspected infringing goods; and
- (5) the possible port and time of entry or exit of the suspected infringing goods, and the means of transportation therefor, and so on.

Where the suspected infringing goods are suspected to infringe upon an archived intellectual property right, the application letter shall also include the customs archival filing number.

Article 14 Where an intellectual property right holder requests the customs to detain any suspected infringing goods, he shall provide the customs with a guaranty of no less than the equivalent value of the goods, which shall be used to indemnify the losses caused to the consignee or consigner due to inappropriate application, and to pay the warehousing, custody and disposal fees, etc. after the goods are detained by the customs; if the intellectual property right holder directly pays warehousing or custody fees to the warehouseman, such fees shall be deducted from the guaranty. The specific measures shall be formulated by the General Administration of Customs.

Article 15 Where an intellectual property right holder who applies for detainment of any suspected infringing goods conforms to Article 13 of the present Regulation, and has provided a guaranty as required by Article 14 of the present Regulation, the customs shall detain the suspected infringing goods, notify the intellectual property right holder in writing, and serve the customs detainment list to the consignee or consigner.

Where an intellectual property right holder who applies for detainment of any suspected infringing

goods does not conform to Article 13 of the present Regulation, or fails to provide a guaranty as required by Article 14 of the present Regulation, the customs shall reject the application, and notify the intellectual property right holder in writing.

Article 16 Where the customs finds that any imported or exported goods are suspected to have infringed upon an archived intellectual property, it shall immediately notify the intellectual property right holder in writing. If the intellectual property right holder files an application in accordance with Article 13 of the present Regulation and provides a guaranty in accordance with Article 14 of the present Regulation within 3 working days as of service of the notice, the customs shall detain the suspected infringing goods, notify the intellectual property right holder in writing, and serve the customs detention list to the consignee or consigner. If the intellectual property right holder fails to file the application or provide the guaranty within the time limit, the customs shall not detain the goods.

Article 17 Upon consent of the customs, an intellectual property right holder and the consignee or consigner may view relevant goods.

Article 18 Where a consignee or consigner considers that his goods do not infringe upon the intellectual property right of the right holder, he shall submit to the customs a written statement attached with relevant evidence.

Article 19 Where a consignee or consigner who is suspected to infringe upon patented goods considers that his imported or exported goods do not infringe upon the patent right, it may, after providing the customs with a guaranty bond of equivalent value to that of the goods, request the customs to release his goods. If the intellectual property right holder fails to bring a lawsuit to the people's court within a reasonable time, the customs shall refund the guaranty bond.

Article 20 Where, after the customs has found that any imported or exported goods are suspected to have infringed upon an archived intellectual property, and has notified the intellectual property right holder, while the intellectual property right holder requests the customs to detain the suspected infringing goods, the customs shall investigate into and ascertain within 30 working days as of the detention whether the detained suspected infringing goods have infringed upon the intellectual property; if the said goods are unable to be ascertained, the customs shall immediately notify the intellectual property right holder in writing.

Article 21 Where the customs investigates into the detained suspected infringing goods, and requests the administration of intellectual property rights to provide assistance, the relevant administration of intellectual property rights shall provide assistance.

Where, when handling an infringement case of imported or exported goods, the administration of intellectual property rights requests the customs to provide assistance, the customs shall provide assistance.

Article 22 When the customs is investigating into the detained suspected infringing goods and other relevant details, the intellectual property right holder, and the consignee or consigner shall provide cooperation.

Article 23 An intellectual property right holder may, after filing an application with the customs for taking protection measures, apply in accordance with 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 to the people's court for taking the measures of

ordering to stop the acts of infringement or taking property preservation with regard to the suspected infringing goods detained.

The customs shall provide assistance if receiving relevant notice of the people's court on assisting in ordering to stop the infringing acts or in taking property preservation.

Article 24 In the event of any of the following circumstances, the customs shall release the detained suspected infringing goods:

(1) the customs detains the suspected infringing goods in accordance with Article 15 of the present Regulation, but does not receive the notice of the people's court on assisting execution within 20

working days as of the detainment;

(2) the customs detains the suspected infringing goods in accordance with Article 16 of the present Regulation, but does not receive the notice of the people's court on assisting execution within 50 working days as of the detainment, and the detained suspected infringing goods cannot be ascertained upon investigation to have infringed upon any intellectual property;

(3) the consignee or consigner of the goods which are suspected to have infringed upon a patent right requests, after providing the customs with a guaranty bond of equivalent value to that of the goods, the customs to release the goods;

(4) the customs considers that the consignee or consigner has sufficient evidence to prove that the goods have not infringed upon the intellectual property right holder's intellectual property.

(5) the intellectual property right holder withdraws the application for detaining the suspected infringing goods before the customs confirms that the suspected infringing goods detained are infringing goods.

Article 25 Where the customs detains any suspected infringing goods in accordance with the present Regulation, the intellectual property right holder shall pay relevant warehousing, custody and disposal fees, etc. If the intellectual property right holder has not paid the relevant fees, the customs may deduct them from the guaranty bond provided to itself, or requests the guarantor to perform the relevant guaranty responsibilities.

Where the suspected infringing goods are deemed to have infringed upon an intellectual property, the intellectual property right holder may calculate the relevant warehousing, custody and disposal fees, etc. he has paid into the reasonable expenditures for stopping the infringing acts.

Article 26 Where the customs finds any suspected criminal case when carrying out the protection of intellectual property rights, it shall transfer the case in accordance with the law to the public security organ for handling.

Chapter IV Legal Liabilities

Article 27 Where any detained suspected infringing goods are ascertained to have infringed upon an intellectual property right after the investigation of the customs, they shall be confiscated by the customs.

The customs shall, after confiscating the goods infringing upon an intellectual property right, inform the intellectual property right holder in writing of the relevant information on the said goods.

Where the confiscated goods infringing upon an intellectual property can be used for the commonweal undertaking, the customs shall transfer them to the relevant commonweal institutions for the purposes of commonweal undertaking; if the intellectual property right holder

has an intent of purchase, the customs may transfer the goods to the intellectual property right holder non-gratuitously. If the confiscated goods infringing upon an intellectual property right are unable to be used for the commonweal undertaking and the intellectual property right holder has no intent of purchase, the customs may lawfully auction them after the infringement features have been eliminated; but the imported goods bearing counterfeit trademarks shall not be permitted to enter the commercial channels only by eliminating the trademarks on the goods, except for special circumstances; and if the infringement features are unable to be eliminated, the customs shall destroy such goods.

Article 28 Where, after accepting an application for archival filing of intellectual property protection or for taking measures of protecting an intellectual property, the customs fails to find the infringing goods, or fails to timely take protection measures or takes poor protection measures due to the fact that the intellectual property right holder fails to provide exact information, the intellectual property right holder shall bear the liabilities by itself.

Where, after the intellectual property right holder requests the customs to detain the suspected infringing goods, the customs is unable to ascertain that the detained suspected infringing goods have infringed upon the intellectual property right holder's intellectual property, or the people's court rules that the said goods have not infringed upon the intellectual property right holder's intellectual property right, the right holder shall bear the indemnity liabilities in accordance with the law.

Article 29 Whoever imports or exports any goods infringing upon an intellectual property right which constitute a crime shall be subject to criminal liabilities in accordance with the law.

Article 30 Where any customs functionary neglects his duties, abuses his powers or practices frauds for personal gains when carrying out protection of intellectual property rights, and a crime is constituted, he shall be subject to criminal liabilities in accordance with the law; if no crime is constituted, he shall be imposed upon administrative sanctions in accordance with the law.

Chapter V Supplementary Provisions

Article 31 Where an individual brings or mails into/out of China articles exceeding the reasonable quantity for personal use and infringing upon an intellectual property as prescribed in Article 2 of this Regulation, such goods shall be treated as infringing goods

Article 32 The present Regulation shall come into force on March 1, 2004. The "Regulation of the People's Republic of China on Customs Protection of Intellectual Property Rights" promulgated by the State Council on July 5, 1995 shall be abrogated simultaneously.