

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

中华人民共和国知识产权海关保护条例

(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)

(2003年12月2日中华人民共和国国务院令 第395号公布 根据2010年3月24日《国务院关于修改〈中华人民共和国知识产权海关保护条例〉的决定》修订 根据2018年3月19日《国务院关于修改和废止部分行政法规的决定》修正)

Chapter I General Provisions

第一章 总则

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.

第一条 为了实施知识产权海关保护,促进对外经济贸易和科技文化交往,维护公共利益,根据《中华人民共和国海关法》,制定本条例。

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.

第二条 本条例所称知识产权海关保护,是指海关对与进出口货物有关并受中华人民共和国法律、行政法规保护的商标专用权、著作权和与著作权有关的权利、专利权(以下统称知识产权)实施的保护。

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;

第三条 国家禁止侵犯知识产权的货物进出口。

海关依照有关法律和本条例的规定实施知识产权保护,行使《中华人民共和国海关法》规定的有关权力。

第四条 知识产权权利人请求海关实施知识产权保护的,应当向海关提出采取保护措施的申请。

第五条 进口货物的收货人或者其代理人、出口货物的发货人或者其代理人应当按照国家规定,向海关如实申报与进出口货物有关的知识产权状况,并提交有关证明文件。

第六条 海关实施知识产权保护时,应当保守有关当事人的商业秘密。

第二章 知识产权的备案

第七条 知识产权权利人可以依照本条例的规定,将其知识产权向海关总署申请备案;申请备案的,应当提交申请书。申请书应当包括下列内容:

- (一) 知识产权权利人的名称或者姓名、注册地或者国籍等;
- (二) 知识产权的名称、内容及其相关信息;
- (三) 知识产权许可行使状况;
- (四) 知识产权权利人合法行使知识产权的货物的名称、产地、进出境地海关、进出口商、主要特征、价格等;

(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.

(五) 已知的侵犯知识产权货物的制造商、进出口商、进出境地海关、主要特征、价格等。

前款规定的申请书内容有证明文件的，知识产权权利人应当附送证明文件。

第八条 海关总署应当自收到全部申请文件之日起 30 个工作日内作出是否准予备案的决定，并书面通知申请人；不予备案的，应当说明理由。

有下列情形之一的，海关总署不予备案：

- (一) 申请文件不齐全或者无效的；
- (二) 申请人不是知识产权权利人的；
- (三) 知识产权不再受法律、行政法规保护的。

第九条 海关发现知识产权权利人申请知识产权备案未如实提供有关情况或者文件的，海关总署可以撤销其备案。

第十条 知识产权海关保护备案自海关总署准予备案之日起生效，有效期为 10 年。

知识产权有效的，知识产权权利人可以在知识产权海关保护备案有效期届满前 6 个月内，向海关总署申请续展备案。每次续展备案的有效期为 10 年。

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;

知识产权海关保护备案有效期届满而不申请续展或者知识产权不再受法律、行政法规保护的，知识产权海关保护备案随即失效。

第十一条 知识产权备案情况发生改变的，知识产权权利人应当自发生改变之日起 30 个工作日内，向海关总署办理备案变更或者注销手续。

知识产权权利人未依照前款规定办理变更或者注销手续，给他人合法进出口或者海关依法履行监管职责造成严重影响的，海关总署可以根据有关利害关系人的申请撤销有关备案，也可以主动撤销有关备案。

第三章 扣留侵权嫌疑货物的申请及其处理

第十二条 知识产权权利人发现侵权嫌疑货物即将进出口的，可以向货物进出境地海关提出扣留侵权嫌疑货物的申请。

第十三条 知识产权权利人请求海关扣留侵权嫌疑货物的，应当提交申请书及相关证明文件，并提供足以证明侵权事实明显存在的证据。

申请书应当包括下列主要内容：

- (一) 知识产权权利人的名称或者姓名、注册地或者国籍等；
- (二) 知识产权的名称、内容及其相关信息；

(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

(三) 侵权嫌疑货物收货人和发货人的名称;

(四) 侵权嫌疑货物名称、规格等;

(五) 侵权嫌疑货物可能进出口的口岸、时间、运输工具等。

侵权嫌疑货物涉嫌侵犯备案知识产权的, 申请书还应当包括海关备案号。

第十四条 知识产权权利人请求海关扣留侵权嫌疑货物的, 应当向海关提供不超过货物等值的担保, 用于赔偿可能因申请不当给收货人、发货人造成的损失, 以及支付货物由海关扣留后的仓储、保管和处置等费用; 知识产权权利人直接向仓储商支付仓储、保管费用的, 从担保中扣除。具体办法由海关总署制定。

第十五条 知识产权权利人申请扣留侵权嫌疑货物, 符合本条例第十三条的规定, 并依照本条例第十四条的规定提供担保的, 海关应当扣留侵权嫌疑货物, 书面通知知识产权权利人, 并将海关扣留凭单送达收货人或者发货人。

知识产权权利人申请扣留侵权嫌疑货物, 不符合本条例第十三条的规定, 或者未依照本条例第十四条的规定提供担保的, 海关应当驳回申请, 并书面通知知识产权权利人。

第十六条 海关发现进出口货物有侵犯备案知识产权嫌疑的, 应当立即书面通知知识产权权利人。知识产权权利人自通知

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 detainment 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 detainment 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

送达之日起3个工作日内依照本条例第十三条的规定提出申请,并依照本条例第十四条的规定提供担保的,海关应当扣留侵权嫌疑货物,书面通知知识产权权利人,并将海关扣留凭单送达收货人或者发货人。知识产权权利人逾期未提出申请或者未提供担保的,海关不得扣留货物。

第十七条 经海关同意,知识产权权利人和收货人或者发货人可以查看有关货物。

第十八条 收货人或者发货人认为其货物未侵犯知识产权权利人的知识产权的,应当向海关提出书面说明并附送相关证据。

第十九条 涉嫌侵犯专利权货物的收货人或者发货人认为其进出口货物未侵犯专利权的,可以在向海关提供货物等值的担保金后,请求海关放行其货物。知识产权权利人未能在合理期限内向人民法院起诉的,海关应当退还担保金。

第二十条 海关发现进出口货物有侵犯备案知识产权嫌疑并通知知识产权权利人后,知识产权权利人请求海关扣留侵权嫌疑货物的,海关应当自扣留之日起30个工作日内对被扣留的侵权嫌疑货物是否侵犯知识产权进行调查、认定;不能认定的,应当立即书面通知知识产权权利人。

第二十一条 海关对被扣留的侵权嫌疑货物进行调查,请求知识产权主管部门提供协助的,

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

有关知识产权主管部门应当予以协助。

知识产权主管部门处理涉及进出口货物的侵权案件请求海关提供协助的，海关应当予以协助。

第二十二条 海关对被扣留的侵权嫌疑货物及有关情况进行调查时，知识产权权利人和收货人或者发货人应当予以配合。

第二十三条 知识产权权利人在向海关提出采取保护措施的申请后，可以依照《中华人民共和国商标法》、《中华人民共和国著作权法》、《中华人民共和国专利法》或者其他有关法律的规定，就被扣留的侵权嫌疑货物向人民法院申请采取责令停止侵权行为或者财产保全的措施。

海关收到人民法院有关责令停止侵权行为或者财产保全的协助执行通知的，应当予以协助。

第二十四条 有下列情形之一的，海关应当放行被扣留的侵权嫌疑货物：

（一）海关依照本条例第十五条的规定扣留侵权嫌疑货物，自扣留之日起 20 个工作日内未收到人民法院协助执行通知的；

（二）海关依照本条例第十六条的规定扣留侵权嫌疑货物，自扣留之日起 50 个工作日内未收到人民法院协助执行通知，并且经调查不能认定被扣留的侵权嫌疑货物侵犯知识产权的；

（三）涉嫌侵犯专利权货物的收货人或者发货人在向海关提供与

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

货物等值的担保金后，请求海关放行其货物的；

(四) 海关认为收货人或者发货人有充分的证据证明其货物未侵犯知识产权权利人的知识产权的；

(五) 在海关认定被扣留的侵权嫌疑货物为侵权货物之前，知识产权权利人撤回扣留侵权嫌疑货物的申请的。

第二十五条 海关依照本条例的规定扣留侵权嫌疑货物，知识产权权利人应当支付有关仓储、保管和处置等费用。知识产权权利人未支付有关费用的，海关可以从其向海关提供的担保金中予以扣除，或者要求担保人履行有关担保责任。

侵权嫌疑货物被认定为侵犯知识产权的，知识产权权利人可以将其支付的有关仓储、保管和处置等费用计入其为制止侵权行为所支付的合理开支。

第二十六条 海关实施知识产权保护发现涉嫌犯罪案件的，应当将案件依法移送公安机关处理。

第四章 法律责任

第二十七条 被扣留的侵权嫌疑货物，经海关调查后认定侵犯知识产权的，由海关予以没收。

海关没收侵犯知识产权货物后，应当将侵犯知识产权货物的有关情况书面通知知识产权权利人。

被没收的侵犯知识产权货物可以用于社会公益事业的，海关应当转交给有关公益机构用于社会公

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.

益事业；知识产权权利人有收购意愿的，海关可以有偿转让给知识产权权利人。被没收的侵犯知识产权货物无法用于社会公益事业且知识产权权利人无收购意愿的，海关可以在消除侵权特征后依法拍卖，但对进口假冒商标货物，除特殊情况外，不能仅清除货物上的商标标识即允许其进入商业渠道；侵权特征无法消除的，海关应当予以销毁。

第二十八条 海关接受知识产权保护备案和采取知识产权保护措施的申请后，因知识产权权利人未提供确切情况而未能发现侵权货物、未能及时采取保护措施或者采取保护措施不力的，由知识产权权利人自行承担责任。

知识产权权利人请求海关扣留侵权嫌疑货物后，海关不能认定被扣留的侵权嫌疑货物侵犯知识产权权利人的知识产权，或者人民法院判定不侵犯知识产权权利人的知识产权的，知识产权权利人应当依法承担赔偿责任。

第二十九条 进口或者出口侵犯知识产权货物，构成犯罪的，依法追究刑事责任。

第三十条 海关工作人员在实施知识产权保护时，玩忽职守、滥用职权、徇私舞弊，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

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.

第五章 附则

第三十一条 个人携带或者邮寄进出境的物品，超出自用、合理数量，并侵犯本条例第二条规定的知识产权的，按照侵权货物处理。

第三十二条 本条例自2004年3月1日起施行。1995年7月5日国务院发布的《中华人民共和国知识产权海关保护条例》同时废止。