

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

(Adopted at the 30th Executive Meeting of the State Council on November 26, 2003, promulgated by Decree No. 395 of the State Council of the People's Republic of China on December 2, 2003, and effective as of March 1, 2004)

### **Chapter I General Provisions**

**Article 1** These Regulations are formulated in accordance with the Customs Law of the People's Republic of China in order to implement Customs protection of intellectual property rights, promote foreign trade and international scientific, technological and cultural exchanges and safeguard public interests.

**Article 2** Customs protection of intellectual property rights used in these Regulations refers to the protection provided by the Customs for the exclusive rights to use a trademark, copyrights and their related rights, and patent rights (hereinafter referred to as intellectual property rights) related to import or export goods and protected under the laws and administrative regulations of the People's Republic of China.

**Article 3** The State prohibits the importation and exportation of goods which infringe intellectual property rights.

The Customs provides protection for intellectual property rights in accordance with the provisions of relevant laws and these Regulations and exercises relevant powers under the Customs Law of the People's Republic of China.

**Article 4** The holders of intellectual property rights, where requesting the Customs to implement protection of intellectual property rights, shall submit an application to the Customs for taking protective measures.

**Article 5** The consignees of import goods or the consignors of export goods and both of their agents shall bona fide declare the status of intellectual property rights related to their import or export goods and present relevant evidentiary documents to the Customs in accordance with the provisions of the State.

**Article 6** When implementing protection of intellectual property rights, the Customs shall keep the confidentiality of commercial secrets of the interested parties.

### **Chapter II Recordation of Intellectual Property Rights**

**Article 7** The holder of an intellectual property right may apply for recordation with the General Administration of Customs of his intellectual property right in accordance with the provisions of these Regulations; when applying for the recordation, he shall present a

written application. The application shall include the following particulars:

- (1) the business name or name, place of registration or nationality, etc. of the holder of the intellectual property right;
- (2) the description, contents and any other relevant information relating to the intellectual property right;
- (3) the status quo relating to licensing of the intellectual property right;
- (4) the description, origin, Customs at the port of entry or exit, importer or exporter, main features and prices, etc. of the goods on which the holder of the intellectual property right lawfully exercises his right;
- (5) the manufacturers, importers or exporters, Customs at the port of entry or exit, main features and prices, etc. of the goods that infringe the intellectual property right, as far as it is known.

The holder of the intellectual property right shall attach any evidentiary documents, provided that the contents of the application referred to in the preceding paragraph are whereby proved.

**Article 8** The General Administration of Customs shall, within 30 working days from the date of receipt of all the application documents, make a decision on whether or not to grant the recordation and shall notify the applicant in writing; where the recordation is not granted, reasons thereof shall be explained.

Under any of the following circumstances, the General Administration of Customs shall not grant the recordation:

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

**Article 9** The General Administration of Customs may revoke a recordation where the Customs finds that the holder of an intellectual property right has not bona fide provided the relevant information or documents in the course of applying for the recordation of the intellectual property right.

**Article 10** A recordation for Customs protection of an intellectual property right shall be valid from the date on which the General Administration of Customs grants the recordation and shall be valid for a term of 10 years.

The holder of the intellectual property right may apply to the General Administration of Customs for renewal of the recordation for Customs protection of the intellectual property right within six months prior to the expiration of its term of validity, provided that the intellectual property right is valid. Each renewal of a recordation shall be valid for a term of 10 years.

A recordation for Customs protection of an intellectual property right shall cease to be valid immediately where no application is presented for renewal of the recordation for Customs protection of the intellectual property right upon expiration of its term of validity, or where the intellectual property right is no longer protected under laws or administrative regulations.

**Article 11** In case of any change in respect of an intellectual property right under recordation, the holder of the intellectual property right shall go through the procedures of modification or cancellation of recordation with the General Administration of Customs within 30 working days from the date of such change.

### **Chapter III Application for Detention of Suspected Infringing Goods and Relative Treatment**

**Article 12** Where discovering the suspected infringing goods pending importation or exportation, the holder of the intellectual property right may present an application with the Customs at the port of entry or exit for detaining such goods.

**Article 13** Where requesting the Customs to detain the suspected infringing goods, the holder of the intellectual property right shall present a written application and relevant evidentiary documents, and provide as well any evidence that sufficiently proves the obvious existence of the fact of infringement.

An application shall mainly include the following particulars:

- (1) the business name or name, place of registration or nationality, etc. of the holder of the intellectual property right;
- (2) the description, contents and any other relevant information relating to the intellectual property right;
- (3) the business name of the consignee and consignor of the suspected infringing goods;
- (4) the descriptions, specifications, etc. of the suspected infringing goods;
- (5) the possible ports, time, means of transport, etc. related to the importation or exportation of the suspected infringing goods.

The application shall include the number of Customs recordation in addition where the goods are suspected to infringe an intellectual property right under recordation.

**Article 14** Where requesting the Customs to detain the suspected infringing goods, the holder of an intellectual property right shall provide to the Customs a security not exceeding or equivalent to the value of the goods to cover the possible compensation for the losses suffered by the consignee and consignor due to an improper application, and the payment of the expenses of warehousing, maintenance and disposal of the goods incurred after detained by the Customs. The corresponding amount shall be deducted from the security where the holder of the intellectual property right makes a direct payment of the expenses of warehousing and maintenance to the warehousing entity. Specific measures are formulated by the General Administration of Customs.

**Article 15** Where the holder of an intellectual property right has applied for detention of the suspected infringing goods in conformity with the provisions of Article 13 of these Regulations and provided a security in conformity with the provisions of Article 14 of these Regulations, the Customs shall detain the suspected infringing goods, notify the holder of the intellectual property right in writing of the detention and serve the consignee or consignor with a Customs Detention Receipt.

Where the holder of an intellectual property right fails to comply with the provisions of Article 13 of these Regulations when applying for detaining the suspected infringing goods, or fails to comply with the provisions of Article 14 of these Regulations when providing a security, the Customs shall refuse the application and notify the holder of the intellectual property right in writing of such refusal.

**Article 16** Where discovering any import or export goods suspected of infringing an intellectual property right under Customs recordation, the Customs shall immediately notify the holder of the intellectual property right in writing of such suspected infringement. In case the holder of the intellectual property right presents an application in conformity with the provisions of Article 13 of these Regulations and provide a security in conformity with the provisions of Article 14 of these Regulations within three working days from the date of service of the notification, the Customs shall detain the suspected infringing goods, notify the holder of the intellectual property right in writing of such detention and serve a Customs Detention Receipt on the consignee or consignor. The Customs shall not detain the goods in case the holder of the intellectual property right fails to present an application or to provide a security within the period.

**Article 17** With consent of the Customs, the holder of the intellectual property right and consignor or consignee may have the relevant goods inspected.

**Article 18** Where believing that his goods have not infringed the right of the holder of the intellectual property right, the consignee or consignor shall present a written explanation to the Customs as well as the relevant evidence.

**Article 19** Where believing that his import or export goods have not infringed a patent, the consignee or consignor of the goods suspected of infringing the patent may request the Customs to release the goods after providing to the Customs a security equivalent to

the value of such goods. The Customs shall refund the security where the holder of the intellectual property right fails to file a lawsuit at the people's court within a reasonable period of time.

**Article 20** Where the holder of an intellectual property right requests the Customs to detain the suspected infringing goods after the Customs discovers the import or export goods suspected of infringing the intellectual property right under Customs recordation and notifies the holder of the intellectual property right of such suspected infringement, the Customs shall carry out an investigation and make, within 30 working days from the date of detention, a determination as to whether the suspected infringing goods under detention have infringed the intellectual property right; in case the determination cannot be made, the Customs shall immediately notify the holder of the intellectual property right in writing.

**Article 21** Where the Customs, when carrying out an investigation on the suspected infringing goods which have been detained, requests any assistance from the competent intellectual property authority, the relevant competent intellectual property authority shall provide such assistance.

Where the competent intellectual property authority, when handling a case of infringement involving import or export goods, requests any assistance from the Customs, the Customs shall provide such assistance.

**Article 22** When the Customs carries out an investigation on the suspected infringing goods under detention and other details of the case, both the holder of the intellectual property right and the consignee or consignor shall provide cooperation.

**Article 23** After presenting an application to the Customs for taking protective measures, the holder of the intellectual property right may, 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, or the Patent Law of the People's Republic of China, apply to the people's court for the adoption of measures to order the cease of the infringing act or for preservation of property against the suspected infringing goods under detention before filing a lawsuit.

The Customs shall provide assistance upon the receipt of a notification from the people's court for assistance in execution of an order to cease an infringing act or for preservation of property.

**Article 24** The Customs shall release the detained suspected infringing goods under any of the following circumstances:

(1) where, after detaining the suspected infringing goods in accordance with the provisions of Article 15 of these Regulations, the Customs has not received any notification from the people's court for assistance in execution of an order within 20 working days from the date of the detention;

(2) where, after detaining the suspected infringing goods in accordance with the provisions of Article 16 of these Regulations, the Customs has not received any notification from the people's court for assistance in execution of an order and cannot determine through investigation that the suspected infringing goods under detention have infringed the intellectual property right within 50 working days from the date of the detention;

(3) where the consignee or consignor of the goods suspected of infringing a patent requests the Customs to release his goods after providing to the Customs a security equivalent to the value of such goods;

(4) where the Customs is convinced that the consignee or consignor possesses ample evidence proving that his goods have not infringed the right of the holder of the intellectual property right.

**Article 25** Where the Customs detains the suspected infringing goods in accordance with the provisions of these Regulations, the holder of the intellectual property right shall make the payment of the relevant expenses for warehousing, maintenance and disposal of the goods. Where the holder of the intellectual property right fails to make such payment, the Customs may deduct it from the security he provided to the Customs or require the guarantor to perform the relevant duty of guarantee.

Where the suspected infringing goods are determined to have infringed an intellectual property right, the holder of the intellectual property right may claim the paid expenses for warehousing, maintenance and disposal as reasonable expenses incurred in halting the infringement.

**Article 26** Where discovering any suspected criminal offence in carrying out the protection of intellectual property rights, the Customs shall hand the case over to the public security authorities for handling according to law.

#### **Chapter IV Legal Liability**

**Article 27** The suspected infringing goods under detention shall be confiscated by the Customs where such goods are considered to have infringed an intellectual property right by the Customs after investigation.

After confiscating the goods infringing an intellectual property right, the Customs shall notify the holder of the intellectual property right in writing of the information related to the goods of infringement.

Where the confiscated goods infringing an intellectual property right can be used for public welfare projects, the Customs shall hand such goods over to the relevant public welfare bodies for use in public welfare projects; where the holder of the intellectual property right intends to purchase the goods, the Customs may have such goods assigned

to the holder of the intellectual property right with compensation. Where either the confiscated goods infringing an intellectual property right can not be used for public welfare projects or the holder of the intellectual property right has no intention to purchase the goods, the Customs may have such goods auctioned according to law after removing their infringing features; where the infringing features can not be removed, the Customs shall destroy the goods.

**Article 28** The articles carried on person, or posted, into or out of the territory shall be confiscated by the Customs if the quantity of such articles exceeds the reasonable limit for personal use and such articles have infringed any intellectual property right provided for by Article 2 of these Regulations.

**Article 29** Where the Customs, after accepting an application for recordation of an intellectual property right or for adopting protective measures for an intellectual property right, fails to discover the infringing goods or to adopt timely protective measures, or adopts protective measures ineffectively, due to the failure on the part of the holder of the intellectual property right to provide exact information, the holder of the intellectual property right shall take full responsibility for the consequences.

Where the holder of an intellectual property right requests the Customs to detain the suspected infringing goods, the Customs can not determine that the detained suspected infringing goods have infringed his intellectual property right or the people's court adjudicates that there is no infringement of his intellectual property right, the holder of the intellectual property right shall bear liability for compensation according to law.

**Article 30** Where the importation or exportation of goods infringing an intellectual property right constitutes a crime, the offender shall be prosecuted for criminal liability according to law.

**Article 31** Any Customs officer who neglects his duty, abuses powers, or practices graft in implementing the protection of intellectual property rights shall be prosecuted for criminal liability according to law if a crime is constituted; if the act has not constituted a crime, an administrative sanction shall be imposed according to law.

## **Chapter V Supplementary Provisions**

**Article 32** Where recording his intellectual property right with the General Administration of Customs, the holder of the intellectual property right shall pay a recordation fee in accordance with relevant provisions of the State.

**Article 33** These Regulations shall become effective from March 1, 2004. The Regulations 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 repealed simultaneously.