

Order of the State Council of the People's Republic of China

No. 395

The Regulation of the People's Republic of China on the Customs Protection of Intellectual Property Rights, which was adopted at the 30th executive meeting of the State Council on November 26th, 2003, is hereby promulgated, and shall be implemented on March 1st, 2004.

Wen Jiabao, Premier
December 2nd, 2003

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

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 refers to 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 intellectual property rights.

The customs shall, according to relevant laws and the present Regulation, practice protection of intellectual property rights, and execute the relevant powers provided for in the Customs Law of the People's Republic of China.

Article 4 Where an intellectual property rights holder requests the customs to practice protection of his intellectual property rights, he shall file an application 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, according to the provisions of the State, truthfully declare to the customs the status of his intellectual property rights in relation to the imported or exported goods, and shall submit relevant certification documents.

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

Chapter II Archival Filing of Intellectual Property Rights

Article 7 An intellectual property rights holder may, in pursuance of the present Regulation, file an application to the Customs General Administration

for archival filing of his intellectual property rights; when applying for archival filing, he shall submit an application letter, which shall cover the following contents:

- (1) The intellectual property rights 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 rights 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 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 rights holder shall attach certification documents, if any, contained in the contents of the application letter in the preceding paragraph.

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

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

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

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

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

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 rights, apply to the Customs General Administration 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 rights, or the intellectual property right is no longer protected by laws or administrative regulations, the aforesaid archival filing shall be invalidated immediately.

Article 11 Where an archived intellectual property is changed in any way, the intellectual property rights holder shall, within 30 working days as of such change, modify or nullify the archival filing in the Customs General Administration.

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 submit 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 certification documents, and provide evidence sufficient to prove the obvious existence of the infringement facts as well.

An application letter shall cover the following main contents:

- (1) The intellectual property rights 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 thereof, and so on.

Where the suspected infringing goods are suspected to infringe 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 because of inappropriate application, and to pay the warehousing, custody and disposal fees, etc. after the goods are detained by the customs; in case the intellectual property rights holder directly pays warehousing or custody fees to the warehouseman, such fees shall be deducted from the guaranty. The detailed measures shall be formulated by the Customs General Administration.

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

Where an intellectual property right holder who files an application for detainment of any suspected infringing goods does not conform to Article 13 of the present Regulation, or fails to provide a guaranty as prescribed in Article 14 of the present Regulation, the customs shall reject the application, and notify the intellectual property rights holder in writing.

Article 16 Where the customs finds that any imported or exported goods are suspected to have infringed an archived intellectual property, it shall immediately notify the intellectual property rights holder in writing. In case the intellectual property rights holder submits an application according to Article 13 of the present Regulation and provides a guaranty according to 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 rights holder in writing, and serve the customs detainment list to the consignee or consigner. In case the intellectual property rights 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 the intellectual property rights 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 patented goods regards that his imported or exported goods do not infringe the patent right, he 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 rights holder fails to lodge 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 an archived intellectual property, and has notified the intellectual property rights holder, while the intellectual property rights 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 the intellectual property; if the aforesaid goods are unable to be ascertained, the customs shall immediately notify the intellectual property rights holder in writing.

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

Where, when handling an infringement case of imported or exported goods, the competent 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 rights holder, and the consignee or consigner shall provide cooperation.

Article 23 An intellectual property right holder may, after submitting an application to the customs for taking protection measures, file an application according to 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 to the people's court before lodging a lawsuit for taking the measure of ordering to stop the infringing acts or taking property preservation with regard to the detained suspected infringing goods.

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 case of any of the following circumstances, the customs shall release the detained suspected infringing goods:

(1) The customs detains the suspected infringing goods according to 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 according to 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 any intellectual property rights;

(3) The consignee or consigner of the goods which are suspected to have infringed a patent right, after providing the customs with a guaranty bond of equivalent value to that of the goods, requests 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 the intellectual property rights of the right holder.

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

Where the suspected infringing goods are regarded to have infringed an intellectual property, the intellectual property rights holder may calculate the relevant warehousing, custody and disposal fees, etc. that 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 an intellectual property rights after the investigation of the customs, they shall be confiscated by the customs.

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

Where the confiscated goods infringing an intellectual property are used for the commonweal undertaking, the customs shall deliver them to the relevant commonweal institutions for the purposes of commonweal undertaking; if the intellectual property rights holder has the intent of purchase, the customs may transfer the goods to the intellectual property rights holder non-gratuitously. In case the confiscated goods infringing an intellectual property right are unable to be used for the commonweal undertaking and the intellectual property rights holder has no intent of purchase, the customs may lawfully auction them after the infringement features have been eliminated; and in case the infringement features are unable to be eliminated, the customs shall destroy such goods.

Article 28 Where an individual brings or mails articles of entry or exit by exceeding the quantity for self-use or the reasonable quantity, and infringes an intellectual property rights prescribed in Article 2 of the present Regulation, the customs shall confiscate such articles.

Article 29 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 in time take protection measures or takes poor protection measures because of the fact that the intellectual property rights holder fails to provide exact information, the intellectual property rights holder shall undertake the liabilities by itself.

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

the law.

Article 30 Where, when importing or exporting any goods infringing an intellectual property rights, a crime is constituted, the offenders shall be subject to criminal liabilities in accordance with the law.

Article 31 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 32 Where an intellectual property rights holder has his intellectual property rights archived in the Customs General Administration, he shall pay the archival filing fee according to the relevant provisions of the State.

Article 33 The present Regulation shall be implemented on March 1st, 2004. The Regulation of the People's Republic of China on Customs Protection of Intellectual Property Rights promulgated by the State Council on July 5th, 1995 shall be abolished simultaneously.