

# **China - Protection of Intellectual Property Rights, Customs Procedures, 1995**

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**Procedures of the Customs of the People's Republic of China on  
Protection of Intellectual Property Rights  
(Promulgated by Decree No.54 of the Customs General  
Administration on September 28, 1995)** 1

**Chapter I - General Provisions** 2

**Article 1** 3

This set of procedures has been formulated in accordance with The Regulations of Customs of the People's Republic of China on Protection of Intellectual Property Rights (hereinafter referred to as The Regulations of Customs Protection) so as to ensure the effective protection of intellectual property rights by the Customs. 4

**Article 2** 5

Obligees of the intellectual property rights (referred to hereinafter as the obligee, in this set of procedures are the owners or licensees of copy rights as described in Article 9 of The Copyright Law of the People's Republic of China , the parties which have registered the trade mark as described in Article 3 of The Trade Mark Law of the People's Republic of China or the patentees as described in Article 6 of The Patent Law of the People's Republic of China. 6

**Article 3** 7

When it deems necessary, the Customs can request a consignor/consignee to make supplementary declaration on the intellectual property rights of the goods that are being shipped while undergoing import/export customs formalities. 8

The consignor/consignee shall, upon request by the Customs, truthfully declare the intellectual property rights of the import/export goods and present related documents proving ownership of the intellectual property rights or the right to legally use the intellectual property. 9

When it deems necessary, the Customs may, in accordance with provisions under The Customs Law of the People's Republic of China, examine and pick up samples of the import/export goods. 10

**Article 4** 11

In protecting intellectual property rights, the Customs shall safeguard the trade secrets of the parties concerned. The parties concerned shall expressly request the Customs to guard its trade secrets in its written document presented to the Customs. 12

## **Chapter II - Record**

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### **Article 5**

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The application for keeping a record with the Customs for the protection of intellectual property rights shall be filed by the obligees or their agents with the Customs General Administration. If an obligee has no business site or representative offices on the Chinese territory, he/she shall entrust his/her agent in China to file the application for record-keeping.

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### **Article 6**

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In case one of the co-owners of the intellectual property right has filed an application for record-keeping with the Customs General Administration, the other co-owners do not have to file such an application again.

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### **Article 7**

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Obligees or their agents, in filing an application for record-keeping with the Customs General Administration, shall apply separately according to the nature of the intellectual property and category of the goods, together with other documents as stated in Article 8 of The Regulations of Customs Protection.

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Except stipulated items, the obligees or their agents shall fill up the application forms in Chinese and pledge to submit authentic and valid documents for examination. Documents submitted, if in foreign languages, shall have a Chinese version attached. The obligees or their agents shall also, upon request by the Customs General Administration, provide samples or photographs of the objects on which the intellectual property rights are applied for record-keeping.

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An agent entrusted by an obligee to file record-keeping applications shall present the power of attorney granted by the obligee concerned.

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### **Article 8**

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An obligee, in applying for record-keeping, shall pay record-keeping fee in accordance with the nature of the intellectual property and the category of the goods. The way of collection and rate of the fees shall be determined separately by the Customs General Administration together with other State organs.

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### **Article 9**

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When approving the applications for record-keeping, the Customs General Administration shall issue the obligee a Record-Keeping Certificate of Customs for Protection of Intellectual Property Rights (referred hereinafter as Record-Keeping Certificate).

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The Customs General Administration can issue a duplicate of Record-Keeping Certificate to the co-owner of an intellectual property right other than the one that filed record-keeping applications. When the obligee applies for protection, both the original and duplicates of Record-Keeping Certificate are legally valid. 26

When rejecting a record-keeping application, the Customs General Administration shall notify the applicant of the rejection and provide reasons for the rejection. 27

#### **Article 10** 28

A Record-Keeping Certificate shall be effective as of the date of its issuance by the Customs General Administration. The effective time of the record-keeping is seven years. If the term for protecting an intellectual property is less than seven years from the date of issuance of the Record-Keeping, the effective time of the Record-Keeping Certificate shall conform with legal protection term of the intellectual property right. 29

#### **Article 11** 30

After approval of the application of the record-keeping by the Customs General Administration, upon the expiration of term of a record-keeping, the obligee or his/her agent may apply to the Customs General Administration for a renewal within six months before the date of the expiration. 31

The obligee or agent, in applying for record-keeping renewal, shall present a written application. 32

#### **Article 12** 33

The Customs General Administration shall, within 15 days since the receipt of the record-keeping renewal application, decide whether to approve or reject the application. In case of rejection, the Customs General Administration shall issue a written notification and state the reasons. 34

The renewed record-keeping approved by the Customs General Administration shall be effective as of the date immediately following the expiration of the original record-keeping term. 35

The effective term of the renewed record-keeping is seven years. If the legal protection time for an intellectual property right is less than seven years as of the effective date of the renewed record-keeping, the effective term of the renewal shall conform with the intellectual property rights' legal protection time. 36

#### **Article 13** 37

In one of the following circumstances, an obligee or his/her agent shall go through 38

modification formalities of intellectual property protection with the Customs General Administration:

1. The name or registered residence of the obligee has changed; 39
2. The licensing of the intellectual property rights has changed; 40
3. The conditions of goods with which an intellectual property right rests have changed; 41
4. The situation of the agent has changed; 42
5. Other circumstances that call for the change of record-keeping of the intellectual property rights. 43

An obligee or his/her agent, in applying for modification of the record-keeping of intellectual property rights, shall present a modification application, the Record-Keeping Certificate and other documents on modification of the intellectual property rights. When the modification of the intellectual property rights need to be approved by department in charge of the State, the approval documents to the effect shall also be presented in applying for record-keeping modification. 44

#### **Article 14** 45

Under one of the following circumstance, the Customs General Administration may rescind the record-keeping: 46

1. The legal protection of an intellectual property right has been declared null; 47
2. The obligee has transferred its intellectual property rights; 48
3. The obligee decides to give up its record-keeping of intellectual property rights protection with the Customs; 49
4. Major Customs protection fallacies incurred as a result of mistaken record-keeping by the obligee or his/her agent, or as a result of the fact that the obligee or his/her agent failed to undergo modification formalities of the record-keeping within the stipulated time limit; 50
5. The obligee or his/her agent failed to pay the required fees as stipulated; 51
6. Other circumstances that should result in the revocation of the record-keeping. 52

After the transfer of an intellectual property right, if the transferee wants continued Customs protection, he/she can undergo the modification formalities as stipulated in Article 13 of this set of procedures. 53

### **Chapter III - Application for Customs Protections** 54

#### **Article 15** 55

When an obligee or his/her agent requests protection from the Customs against sus- 56

pected goods to be exported/imported, he /she shall, in accordance with Article 13 of the Regulations of Customs Protection, file a written application to this effect with the Customs office at the place where the goods are expected to be exported/imported, together with related material objects, photographs or other proofs proving the suspected infringement if requested by the Customs. 57

An application for Customs protection shall be written in Chinese. Other documents submitted, if written in a foreign language, shall also have Chinese version attached. 58

In the application for customs protection, an obligee or his/her agent shall expressly request the Customs to apprehend the goods that are involved in the suspected infringement of the intellectual property rights concerned. 59

The obligee or its agent, in applying for Customs protection, shall present Record-Keeping Certificate as well as its identification papers. The agent shall also submit power of attorney granted by the obligee with the Customs. 60

#### **Article 16** 61

An obligee or his/her agent, in applying for Customs apprehension of the suspected goods, shall, in accordance with Article 14 of the Regulations of Customs Protection, pay a guarantee equivalent to the value of CIF/FOB of the imported/exported goods. If the amount of CIF/FOB cannot be decided, a sum as estimated by the customs shall be paid. 62

#### **Article 17** 63

An obligee or his/her agent without a record-keeping arrangement with the Customs General Administration, in applying for Customs protection of his/her intellectual property rights, shall, in accordance with Article 15 of the Regulations of Customs Protection, present the Customs General Administration with record-keeping application documents and application papers for protection. 64

#### **Article 18** 65

If the application documents of the obligee or his/her agent fail to meet the before-mentioned requirements in this chapter, the Customs office of the import/export port can reject. 66

#### **Article 19** 67

If an obligee with record-keeping decides to withdraw his/her request for Customs protection, he/she shall file a written request to such effect before the Customs decides to carry out the apprehension of the suspected goods. 68

**Chapter IV - Investigation and Settlement** 69

**Article 20** 70

The Customs, in apprehending suspected goods in accordance with Articles 17 and 18 of the Regulations of Customs Protection, shall issue an apprehension voucher to the consignor/consignee and issue a written notification to the obligee or his/her agent. 71

**Article 21** 72

Upon notification by the Customs of the apprehension of goods suspected of infringement in accordance with Article 18 of the Regulations of Customs Protection, an obligee or his/her agent shall reply in one of the following three ways within three days after the receipt of the written notification. 73

1. In accordance with the provisions in Chapter Three of this set of procedures, file applications for Customs Protection and pay guarantee in accordance with Article 16 of this set of procedures; 74

2. Present a written statement to request the withdrawal of the right to protection and state the reasons; 75

3. Present a written statement to the Customs to show that the goods apprehended are not involved in rights infringement. 76

If the obligee or his/her agent fails to present a reply within the time limit in the aforementioned manners, the Customs may, in accordance with Article 22 of the Regulations of Customs Protection, release the goods apprehended. 77

**Article 22** 78

A consignor/consignee, if considering that the goods apprehended by the Customs are not involved in rights infringement, may file a written objection within seven days since receiving the apprehension voucher with the Customs that produced the voucher. 79

Upon receiving the written objection of the consignor/consignee, the Customs shall send the obligee or his/her agent a written notification of the dispute over infringement. 80

**Article 23** 81

If an obligee or his/her agent, in accordance with Article 17 of the Regulations of Customs Protection, files a complaint over the disputed rights infringement with the departments in charge for the administration of intellectual property rights protection or files a lawsuit with the people's court, a written notification as well as related documents' duplicate shall be sent to the Customs within 15 days since the receipt of the Customs 82

written notification of the infringement dispute. Without receiving the notification after the deadline, the Customs, in accordance with Article 22 of the Regulations of Customs Protection, shall release the apprehended goods.

#### **Article 24**

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A consignor/consignee, in requesting the release of the concerned goods in accordance with Article 19 of the Regulations of Customs Protection, shall file a written request with the Customs and pay in advance a guarantee equivalent to twice as much as the CIF/FOB of the imported/exported goods.

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Before releasing the goods, the Customs shall pick up a sample and have it sealed and clearly marked by the Customs and the consignor/consignee confirms by signing on the paper strip seal or through other means.

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#### **Article 25**

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Under one of the following circumstances, the Customs can reject the application by a consignor/consignee for release of the goods suspected of rights infringement:

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1. The consignor/consignee failed to file an objection over the Customs apprehension of the goods in accordance with related provisions;
2. The consignor/consignee failed to pay the required guarantee in advance;
3. The goods apprehended by the Customs are involved in other illegal matters;
4. The people's court has already made a ruling of possession protection;
5. Other conditions for the Customs to release the goods were not met.

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#### **Article 26**

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The Customs shall, in accordance with Article 20 of the Regulations of Customs Protection, start to make investigations on the goods suspected of rights infringement and related matters within 15 days since the apprehension of the goods. The Customs shall cease the investigations under one of the following circumstances:

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1. The parties concerned have filed a complaint with the departments in charge for the protection of intellectual property rights or have filed a lawsuit with the people's court over the rights infringement dispute;
2. The Customs suspect that the dispute involves criminal activities and thus should be turned over to other related departments for further investigation.

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During the investigation, the obligee or its agent shall give necessary assistance as required by the Customs.

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**Article 27**

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The Customs, in releasing the goods in accordance with Article 22 of the Regulations of Customs Protection, shall send the obligee or his/her agent a written notification and return the guarantee fund after deducting storage fees and compensation to other party that suffered damages as a result of inappropriate application for goods apprehension.

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If the goods in question have already been released in accordance with Article 19 of the Regulations of Customs Protection, the Customs shall return the submitted guarantee money to the obligee or his/her agent.

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**Article 28**

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If the apprehended goods have been proved by the Customs and the departments in charge for the protection of intellectual property rights or by the peoples court as involved in rights infringement, the Customs shall have them confiscated in accordance with Article 23 of the Regulations of Customs Protection.

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For the goods that have been released by the Customs in accordance with Article 19 of the Regulations of Customs Protection, the Customs shall have them recovered and confiscated. If the goods cannot be recovered and confiscated, the Customs shall seek a payment, equivalent to the CIF/FOB of the imported/exported goods from the consignor/consignee.

103

The Customs, in confiscating the goods involved in rights infringement or seeking an equivalent payment, shall issue the consignor/consignee a notification of penalty.

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**Article 29**

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After confiscating the goods involved in rights infringement, the Customs shall, in accordance with Article 19 of the Regulations of Customs Protection, return the submitted guarantee fund to the consignor/consignee, deducting the value of the confiscated goods, the storage fees of the goods during apprehension and processing fee for the goods involved in rights infringement.

106

After confiscation the goods involved in rights infringement, the Customs shall send the obligee or his/her agent a written notification. As to the guarantee fund submitted by the obligee, the Customs shall, in addition to the money deducted from the consignor/consignee's guarantee as stated in the previous paragraph, deduct fees incurred during the storage and processing of the goods in question and return the remaining sum to the obligee.

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**Article 30**

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The amount of damages that should be paid to the other parties concerned as a result

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of the obligee's inappropriate application for goods apprehension shall be established in accordance with the ruling or verdict of the people's court.

The amount of storage fees of goods apprehended and the processing fees of goods involved in rights infringement shall be established in accordance with the actual expense incurred. 110

If the amount of guarantee funds submitted by the consignor/consignee and the obligee cannot fully cover the storage and processing fees and the equivalent of the value of the goods confiscated, the Customs are entitled to seek full payment. 111

## **Chapter V - Supplementary Provisions** 112

### **Article 31** 113

The right to interpret this set of procedures resides in the Customs General Administration. 114

### **Article 32** 115

This set of procedures goes into effect as of October 1, 1995. 116

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