

China - Regulations on the Customs Protection of Intellectual Property Rights, 1995

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**Regulations of the People's Republic of China on the Customs
Protection of Intellectual Property Rights** 1
**(Promulgated by Decree No. 179 of the State Council of the People's
Republic of China on July 5, 1995)**

Chapter I - General Provisions 2

Article 1 3

These Regulations are hereby formulated in line with relevant laws of the People's Republic of China to carry out customs protection of intellectual property rights, promote foreign economic relations and trade and scientific, technical and cultural exchanges, and safeguard the public interests of the society. 4

Article 2 5

These Regulations are applicable to intellectual property rights including trademark franchises, copyrights and patents that are related to import and export goods and put under protection by the laws and administrative decrees of the People's Republic of China. 6

Article 3 7

Goods infringing upon intellectual property rights put under protection by laws and administrative decrees of the People's Republic of China (hereinafter referred to as right-infringing goods) will be banned from import and export. 8

Article 4 9

The Customs of the People's Republic of China shall provide protection to intellectual property rights related to import and export goods and exercise authority stipulated in the Customs Law of the People's Republic of China. 10

Article 5 11

The consignee of import goods and the consignor of export goods as well as their agents (hereinafter totally referred to as the consignee and the consignor) shall declare faithfully to Customs as required the current status of intellectual property rights related to import and export goods and submit relevant documents. 12

Article 6

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Proprietors of intellectual property rights and their agents (hereinafter referred to as the proprietor) shall register with the Customs their intellectual property rights related to import and export goods if they ask Customs to provide protection to these rights, and file applications to the Customs for taking protection measures if they deem it necessary.

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Article 7

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The Customs shall keep the commercial secrets of the parties concerned when they carry out protection of intellectual property rights.

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Chapter II - Recording

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Article 8

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The proprietor shall file written applications to the Customs General Administration if they apply for customs recording of intellectual property rights protection.

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These applications shall include the following contents:

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(1) Title or name of the proprietor, place or country of registration, residence, legal representative, and major venue of business;

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(2) The serial number, content and period of validity of a registered trademark; the serial number, content and period of validity of patent awarding; or contents of relevant copyrights;

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(3) The title and origin of goods related to intellectual property rights;

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(4) The person or persons authorized or allowed to use intellectual property rights;

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(5) Customs of entry or exit, importers or exporters, major characteristics, normal prices, and other descriptions about the goods related to intellectual property rights;

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(6) Known manufacturers of right-infringing goods, importers or exporters, major customs of entry or exit, and outstanding characteristics and prices of these goods;

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(7) Other details for explanation as required by the Customs General Administration.

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The following documents shall be submitted together with written applications:

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(1) Duplicates of the identification cards of the proprietor, or copies of the certificates of registration or duplicates of the certificates verified by registration organs;

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(2) Duplicates of the certificates of trademark registration, announcements on the transfer

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of registered trademarks verified by trademark bureaus or duplicates of contracts on trademark licensing registered with trademark bureaus, duplicates of patent certificates, copies of contracts on patent transfer registered with and published by patent offices, copies of licenses for exploitation of patents, or certificates or evidences of copyright;

(3) Other documents required by the Customs General Administration.

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Article 9

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The Customs General Administration shall inform applicants of its decision to grant or refuse recording within 30 days after receiving all application documents. The Customs General Administration shall issue certificates of recording if it decides to grant recording, or provide justification if it decides to refuse recording.

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Article 10

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Recording of Customs protection of intellectual property rights shall take effect on the date of approval of recording by the Customs General Administration and remain valid for a period of seven years.

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Under the prerequisite that an intellectual property right is still valid, the proprietor can apply to the Customs General Administration for prolonging recording six months before expiration of the term of validity of recorded Customs protection. Each prolonging shall hold valid for seven years.

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The recording of Customs protection of intellectual property rights shall become invalid if no applications are filed to the Customs General Administration for prolonging it or the term of legal protection of trademark licenses, copyrights and patents expires.

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Article 11

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Should any alterations be made in recorded intellectual property rights, the proprietor shall go through recording alteration or cancellation procedures with the Customs General Administration within 10 days of verification of these alterations by departments responsible for intellectual property rights.

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Chapter III - Application

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Article 12

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The proprietor recorded at the Customs General Administration can, upon discovery of

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cases of imminent entry or exit of goods suspected of right infringement, apply to local customs offices for taking intellectual property right protection measures.

Article 13

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Written applications shall be submitted if customs offices are required to take intellectual property right protection measures.

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These applications shall contain the following items:

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(1) Title and serial number of Customs recording of the intellectual property rights applied for protection;

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(2) Name or title, residence, legal representative, and major business venues of persons suspected of infringement;

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(3) Name, specification and other descriptions about goods suspected of infringement;

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(4) The port, time, means of transportation, and consignee or consignor of and other details about the possible entry or exit of the goods suspected of infringement;

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(5) Evidences on infringement.

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(6) The measures to be taken by the Customs;

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(7) Other contents required by the Customs.

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Article 14

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Should the applicant applies to the Customs for detaining goods suspected of right infringement, it shall pay the Customs guarantees equal to the C. I. F. of the import goods or the F. O. B. of export goods.

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Article 15

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Should the proprietor applies to the Customs for taking protection measures for intellectual property rights that have not been put on the record at the Customs General Administration, it shall go through, in accordance with stipulations in Article 8 of these Regulations, procedures of recording of Customs protection of these intellectual property rights at the Customs General Administration at the same time of its application.

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Article 16

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Customs offices shall refuse applications filed by applicants for taking intellectual property rights protection measures if these applications do not conform with relevant stipulations of these Regulations.

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Chapter IV - Investigation and Disposal

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Article 17

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When a customs office detains, pursuant to applications of the proprietor, goods suspected of right infringement, it shall produce customs documents of detainment and send them to the consignee or the consignor. Written notices shall also be sent to the applicant.

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Should the consignee or the consignor upholds that their import or export goods do not infringe upon the intellectual property rights of the applicant, they shall submit written explanations to customs offices within seven days after receiving customs documents of detainment. In case no objections are raised by the consignee or the consignor, customs offices shall have the right to, after investigation, dispose of the detained goods suspected of right infringement as right-infringing goods. If objections are raised, customs offices shall immediately inform, in written form, the applicant of the objections.

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Within 15 days after receiving written notices as stipulated in the first clause of this Article, the applicant shall have the right to apply to departments in charge of intellectual property rights for handling disputes over right infringement or raise lawsuits with people's courts.

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Article 18

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Should customs offices suspect import or export goods of infringing upon intellectual property rights recorded at the Customs General Administration, they shall have the right to detain these goods. Customs offices that detain goods suspected of infringing upon intellectual property rights shall produce documents of detainment, send them to the consignee or the consignor, and send written notices to the proprietor. If the proprietor files written applications for intellectual property right protection within three days after receiving these notices, the case shall be handled accordance with stipulations in Article 17 of these Regulations.

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Article 19

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Should the consignee or the consignor upholds that their import or export goods do not infringe upon the intellectual property rights of the applicant, they can apply to customs offices for passing the goods in question after paying customs offices guarantees twice the C. I. F. of the import goods or the F. O. B. of the export goods.

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Article 20

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When customs offices detain, in accordance with stipulations in articles 17 and 18 of these

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Regulations, goods suspected of infringing upon intellectual property rights, they shall start, within 15 days after the detainment, investigations of the detained goods suspected of right infringement and other aspects in connection, unless the parties disputing over right infringement have reported the cases for handling by departments in charge of intellectual property rights or raised lawsuits with people's courts.

Should customs offices discover cases suspected of crime, however, they shall pass the cases to relevant departments for investigation. 70

Article 21 71

The proprietor shall provide necessary assistance if customs offices decide to investigate goods detained for suspicion of infringing upon intellectual property rights. 72

Article 22 73

Customs offices shall release goods detained for suspicion of infringing upon intellectual property rights should any of the following cases occur in the goods in question: 74

(1) Clearance of suspicion of right infringement by customs offices or departments in charge of intellectual property rights after investigation; 75

(2) Judgment or ruling by people's courts to clear the goods of right infringement; 76

(3) Failure by the parties involved to raise lawsuits with people's courts within prescribed periods of time, refusal by people's courts to accept the cases, or failure by people's courts to reach rulings on property risks; 77

(4) Failure on the part of the proprietor to respond within prescribed periods of time or abandonment by the proprietor of customs protection of intellectual property rights. 78

Article 23 79

Goods detained for suspicion of right infringement shall be confiscated by customs offices if they are confirmed by customs offices, departments in charge of intellectual property rights or people's courts to have infringed upon intellectual property rights. 80

Article 24 81

Customs offices shall dispose goods confiscated for infringing upon intellectual property rights according to different cases and in line with the following stipulations: 82

(1) Destruction of goods that have infringed upon copyrights; 83

(2) Destruction of goods that have infringed upon trademark licenses in case the infringed trademarks cannot be removed, and removal of the infringed trademarks if these infringed trade marks can be removed and the goods in question can be utilized. These goods shall be only used, however, for social and public benefits or be auctioned in accordance with law to non-infringing persons for self use; 84

(3) Goods other than specified in the preceding clauses shall be disposed of in line with relevant State Council stipulations. 85

Article 25 86

After effectuation of Customs decisions, decisions by departments in charge of intellectual property rights, and verdicts or rulings of people's court, customs offices shall return the guarantees paid by the parties involved after deduction of the following items: 87

(1) Costs for the storage, keeping, disposal of goods; 88

(2) Compensations to losses suffered by relevant parties due to improper applications. 89

Article 26 90

Civil disputes between the proprietor and the consignee or the consignor shall be settled through legal procedures, arbitration or any other forms chosen by the parties concerned in accordance with law. Customs offices shall not accept such cases. 91

Article 27 92

Customs offices that have accepted recording of customs protection of intellectual property rights and agreed to take intellectual property rights protection measures shall not hold responsibility over neither their failure to discover right-infringing goods and to take protection measures in good time nor their taking of inappropriate protection measures due to failure on the part of the proprietor to provide accurate information. This responsibility shall be shouldered by the proprietor instead. 93

Chapter V - Legal Responsibilities 94

Article 28 95

Customs offices can impose fines amounting to no more than the C. I. F. of the import goods or the F. O. B. of the export goods upon the consignee or the consignor who knows clearly or should know that their goods have infringed upon the intellectual property rights of others. 96

Article 29

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Customs offices can impose fines amounting to no more than the C. I. F. of the import goods or the F. O. B. of the export goods upon the consignee or the consignor who fails to make true reports on the conditions of the intellectual property rights related to their import or export goods and submit relevant documents.

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Article 30

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Should a party has objections to the decision of punishment made by a customs office, it can apply, within 30 days after receiving the notice of punishment or within 30 days after the public announcement of the customs decision in case the party cannot be informed, for rediscussion* of the case to the customs offices that has made the decision or a customs office at a higher level. The customs offices shall made a rediscussion decision within 90 days after receiving the application for rediscussion. Should a party raises objections to the rediscussion decision, it can raise a lawsuit with a people's court within 30 days after receiving the rediscussion decision.

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A party can also directly raise a lawsuit with a people's court within 30 days after receiving the notice of punishment or 30 days within the public announcement of the customs decision on punishment.

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Article 31

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Criminal responsibilities shall be affixed in case crimes are committed through import or export of right-infringing goods.

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Article 32

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Customs offices shall be brought to hold criminal responsibilities in accordance with law if they commit crimes when providing intellectual property rights protection due to abuse of power, deliberate creation of difficulties, dereliction of duty, or engagement in malpractice for selfish ends, or be disciplined administratively in accordance with law if their cases are not so serious as to become criminal.

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Chapter VI - Supplementary Rules

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Article 33

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Luggage personally carried into or out of China and parcels mailed into or out of China

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shall be regarded as right-infringing goods and disposed of in line with relevant stipulations of these Regulations if they go beyond the rational amounts allowed for personal use and infringe upon the intellectual property rights protected by the laws and administrative decrees of the People's Republic of China.

Article 34

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When providing protection to intellectual property rights, customs offices can charge fees for recording and other fees necessary for the detainment and disposal of right-infringing goods. Specific rules shall be worked out by the Customs General Administration together with responsible financial and price departments under the State Council.

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Article 35

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Specific stipulations on the application for recording of customs protection of intellectual property rights and taking of intellectual property rights protection measures and the forms of relevant documents shall be worked out by the Customs General Administration.

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Article 36

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These Regulations shall take effect on October 1, 1995.

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