Regulations on Customs Protection of Intellectual Property Rights of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Recordation of IPR 1

Chapter III — Detention and Disposal 2

Chapter IV — Legal Liability 3

Chapter V — Supplementary Provisions 3

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Recordation of IPR
- Chapter III — Detention and Disposal
- Chapter IV — Legal Liability
- Chapter V — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Regulations are formulated for the purposes of implementing customs protection of intellectual property rights, promoting foreign economic and trade cooperation, technological and cultural exchanges, and safeguarding public interests.

Article 2 — For the purposes of these Regulations, "customs protection of intellectual property rights" means the protection implemented by customs authorities over intellectual property rights related to imported and exported goods and protected by the laws and administrative regulations of the People's Republic of China, including trademark rights, copyright and copyright-related rights, and patent rights.

Article 3 — The state shall prohibit the import and export of goods that infringe upon intellectual property rights. Customs authorities shall, in accordance with the provisions of relevant laws and these Regulations, implement intellectual property rights protection and exercise the powers conferred by relevant laws.

Chapter II — Recordation of IPR

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Article 4 — An intellectual property right holder may apply to the General Administration of Customs for recordation of its intellectual property rights. Where the application is approved, the customs authority shall notify the applicant. The recordation shall be valid for 10 years from the date of approval by the General Administration of Customs.

Article 5 — Where the intellectual property right holder applies for recordation, it shall submit an application and provide relevant supporting documents. The General Administration of Customs shall make a decision on whether to approve the recordation within 30 working days from the date of receipt of all application documents.

Article 6 — Where the recorded intellectual property right changes, the intellectual property right holder shall apply for alteration or renewal of the recordation within 30 working days from the date of the change.

Article 7 — Where an intellectual property right holder discovers that goods suspected of infringement are about to be imported or exported, it may submit an application to the customs authority at the place where the goods enter or exit the country, requesting the customs authority to detain the goods suspected of infringement. The application shall be accompanied by relevant evidence sufficient to prove the existence of the infringement.

Chapter III — Detention and Disposal

Article 8 — Where an intellectual property right holder requests the detention of goods suspected of infringement, it shall provide a security deposit not exceeding the value of the goods. The customs authority shall decide whether to detain the goods suspected of infringement within 30 working days from the date of detention.

Article 9 — Where the intellectual property right holder fails to provide a security deposit, the customs authority shall not detain the goods. Where the goods detained are determined to be infringing goods, the security deposit paid by the intellectual property right holder shall be used to offset the costs of warehousing, custody, and disposal of the goods.

Article 10 — Where customs authorities discover during supervision that imported or exported goods are suspected of infringing recorded intellectual property rights, they shall notify the intellectual property right holder in writing. The intellectual property right holder shall, within three working days from the date of receipt of the notice, submit an application for detention and provide a security deposit.

Article 11 — Where the customs authority detains goods suspected of infringing a patent right and the consignee or consignor of the goods submits a written application to the customs authority for the release of the goods after providing a security deposit equivalent to the value of the goods, the customs authority may release the goods.

Article 12 — After the customs authority detains goods suspected of infringement, it shall investigate the facts of the infringement. Where the investigation confirms the infringement, the customs authority shall confiscate the infringing goods. Where the rights holder fails to file a lawsuit or the people's court decides not to detain the goods, the customs authority shall release the goods.

Article 13 — Where an individual passenger brings or mails a small quantity of articles for personal use that are suspected of infringing intellectual property rights, customs may release the articles if the quantity does not exceed the reasonable amount for personal use, unless otherwise specified.

Article 14 — Confiscated infringing goods may be disposed of by the customs authority in the following ways:

Article 14.1 — Where the infringing trademark, logo, or other marks can be removed and the goods can be used for public welfare undertakings, they may be transferred to relevant public welfare institutions;

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Article 14.2 — Where the intellectual property right holder is willing to purchase the goods, the goods may be transferred to the intellectual property right holder with compensation;

Article 14.3 — Where neither of the above methods applies and the infringing marks cannot be removed, the goods shall be destroyed.

Chapter IV — Legal Liability

Article 15 — Where goods are imported or exported with knowledge that they infringe intellectual property rights, criminal liability shall be pursued in accordance with the law where a crime is constituted. Where a crime is not constituted, the customs authority shall confiscate the infringing goods and impose a fine of not more than 30 percent of the value of the goods.

Article 16 — Where customs authorities detain goods suspected of infringement and the detention is later found to be unjustified, causing losses to the consignee or consignor, the intellectual property right holder shall be liable for compensation.

Article 17 — Where the staff of customs authorities abuse their power, neglect their duties, or engage in malpractice, they shall be subject to administrative sanctions. Where a crime is constituted, criminal liability shall be pursued.

Chapter V — Supplementary Provisions

Article 18 — The General Administration of Customs shall formulate implementation measures in accordance with these Regulations.

Article 19 — These Regulations shall take effect on March 1, 2004. The 2010 amendment shall take effect on April 1, 2010.

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