

## **Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent and Copyright**

1. The Directions are adopted for the purpose of protecting the rights and interests of patent and copyright holders in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") of the World Trade Organization ("WTO") as well as the relevant laws and regulations of the Republic of China on the basis of fairness and equality so as to promote normal international trade and avoid the creation of barriers to Customs clearance.
  
2. In the event that the patent holder<sup>1</sup> (including exclusive licensee) regards<sup>2</sup> specific imported/exported goods to be potentially infringing articles, and obtains an injunction from the court enjoining the import/export of that goods, Customs<sup>3</sup> upon receiving a notice from the court shall implement the supplementary border measures.

Customs may notify said court of the obstacles encountered while implementing the border measures, on condition that the information (including the information of the accused infringer, description of goods in question, specification, model, etc.) revealed in said notice is imprecise; or the matters involved and the scope of the protected rights cannot be determined precisely. When further action is deemed necessary by the court in charge of the injunction proceeding, Customs shall apply the border measures accordingly.

When the events as indicated in said notice are discovered while proceeding with the border measures, Customs shall notify the responsible court, the patent holder,

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<sup>1</sup> For consistency using "the patent holder", but "the patentee" may be more concise

<sup>2</sup> Not use "claim" to prevent confusion with judicial procedure; the word "consider" might be another option

<sup>3</sup> The word "Customs" has the same meaning as "the Customs authority" and seems more contemporary and concise.

and the importer/exporter.

Customs may approve the application filed by the importer/exporter of the goods indicated in paragraph 1 for returning or shutting out goods provided that the content of said notice and other related clearance regulations have not been violated.

Customs shall cease to implement the measures when receiving a notice of revocation from the court, or upon expiration of the implementing term.

3. Copyright is protected under Customs primarily on the ground of complaints made by the copyright holder (including exclusive licensee) (hereinafter referred to as “copyright holder”). In the event that the Customs authority discovers imported or exported goods suspected of potentially infringing on copyright upon advice given by the copyright holder, or upon notice given by other authorities or in the execution of its own duties, the Customs authority shall proceed with actions as indicated herein.
  
4. In the event that the copyright holder lodges a complaint that specific imported or exported goods have infringed on his or her copyright, he/she should notify Customs Administration, Ministry of Finance or the Customs Office at the port of import or export in writing attached with the following information:
  - (1) Facts of the infringement and explanations which are sufficient to identify the goods that infringe on copyright.
  - (2) Relevant specified information, such as the name of the exporter/importer concerned, description of the goods, the port and date of importation/exportation, flight or voyage number, number of container, place of storing goods.

(3) Copyright certificate or any other document which is sufficient to establish copyright ownership.

In the event that the aforementioned documents are submitted by the proxy of the right holder, an additional proof of proxy must be included as well.

5. When the Customs authority receives the complaint specified in the preceding Article, the Customs authority shall scrutinize and decide whether the contents of the complaint are concrete. Once accepting the complaint, the Customs authority should notify the copyright holder. In the event that the Customs authority rejects the complaint, the Customs authority shall notify the copyright holder and state the rationales for rejection. When necessary, the Customs authority may notify the copyright holder to come to the office and provide explanation.
6. When the Customs authority accepts the complaint in accordance with the preceding Article and suspects from the appearance of exported/imported goods that there is an infringement of copyright, the Customs authority shall notify the copyright holder and exporter/importer within one (1) business day.

After receiving the aforementioned notification, the copyright holder shall identify on-site the items in question within four (4) hours for export by air freight and within one (1) business day for import/export by sea freight and import by air freight, and then submit evidence of infringement within three (3) business days. Anyone failing to provide such evidence in time should apply in writing with a legitimate reason for an extension of additional three (3) business days prior to the deadline. Application for extension is acceptable only once.

After receiving the aforementioned notification, the importer/exporter should submit documents of authorization within three (3) business days. Anyone failing

to provide such evidence in time should apply in writing with a legitimate reason for additional three (3) business days prior to the deadline. Application for extension is acceptable only once.

7. The following procedures shall apply when the copyright holder, in accordance with the preceding Article, has identified the goods in question that have indeed infringed on his/her copyrights and has submitted evidence of infringement:

(1) When the importer/exporter fails to submit authorization document prior to the deadline stated in Paragraph 3 of the preceding Article, the Customs authority shall suspend the release of the goods in accordance with Article 90-1 of the Copyright Act and notify the copyright holder.

(2) In the event that the right holder fails to apply to the Customs authority for detention in accordance with Article 90-1 of the Copyright Act or initiate protective civil or criminal procedures within three (3) business days after the Customs authority has suspended the release of the goods, the Customs authority shall immediately release the goods in question if there is no violation of other Customs clearance regulations.

(3) In the event that the importer/exporter provides authorization document within the deadline stated in Paragraph 3 of the preceding Article, the Customs authority shall immediately notify the copyright holder. The copyright holder shall apply to the Customs authority for detention in accordance with Article 90-1 of the Copyright Act, or apply to the court for preservation proceedings within three (3) business days after receiving the notice, and the Customs authority shall implement the detention. If the right holder fails to make either of the above applications within the prescribed time and there is no violation of other Customs clearance regulations, the Customs authority shall immediately release

the goods in question.

(4) After the copyright holder has applied to the Customs authority for detention of the goods, where the applicant thereof fails to initiate litigation proceedings against the detained goods and notify the Customs authority within twelve (12) days counting from the date on which the Customs authority has notified its acceptance of detention requested by the said applicant thereof, the Customs authority shall rescind the detention order. If there is no violation of Customs clearance regulations, the Customs authority shall follow relevant regulations on export/import clearance procedures. The Customs authority may extend the preceding period by an additional twelve (12) days if necessary.

8. In the event that the copyright holder does not appear to identify the goods in question in accordance with Article 6, or does not provide evidence of infringement prior to the deadline, or the items in question being identified without infringing their copyrights, the Customs authority shall immediately release the goods in question if there is no violation of other Customs clearance regulations.

9. While lodging advice that unspecified imported or exported goods are suspected to have infringed on his/her copyrights, the copyright holder shall make it to Customs Administration, Ministry of Finance or the Customs Office at the port of the export/import in writing and attach the data set out in Subparagraph 1 and Subparagraph 3 of Paragraph 1 of Article 4.

When Customs authority accepts the advice as prescribed in the preceding Paragraph and performs the protection measures, regulations set out in Article 5~8

shall apply mutatis mutandis.

The Customs authority shall perform protection measures for the advice as prescribed in the preceding Paragraph for one year starting from the date of acceptance of advice. The copyright holder may update the data and apply for extension of one more year each time prior to the expiration date. Those who do not apply for extension shall lodge new advice to the Customs.

10. When the Customs authority receives a report from other government agencies that imported/exported goods are suspected of infringing on copyrights, or discovers on its initiative that the imported/exported goods are obviously infringing on copyrights, regulations on performing protection measures set out in Article 5~8 shall apply mutatis mutandis.

When the Customs authority performs protection measures set out in the preceding Paragraph and fails to obtain the contact information of the copyright holder, the Customs authority may seek assistance from the Intellectual Property Office, Ministry of Economic Affairs via facsimile.

In the event that the Customs authority fails to obtain the contact information of the copyright holder within one (1) business day after reaching out to the Intellectual Property Office, Ministry of Economic Affairs and cannot find evidence of violating other Customs regulation, the Customs authority shall follow relevant regulations on export/import clearance procedures after taking representative samples.

11. Provided that the detained goods are determined as infringement in a final and conclusive judgment by the court, Customs, under a written request from the

copyright holder, may provide with information concerning quantity of goods detained, the consignor, the importer, and the name/title/address of the consignee.