

中国的知识产权海关保护制度

China's Legal Framework for Customs Protection of Intellectual Property Rights

第一部分 知识产权海关保护概述 Part One Brief introduction

1. 《中华人民共和国知识产权海关保护条例》是指海关对与进出口货物有关并受中华人民共和国法律、行政法规保护的商标专用权、著作权和与著作权有关权利、专利权实施的保护。知识产权海关保护制度作用在于：一是通过保护与进出口货物有关的知识产权来履行我国作为世贸组织成员国应尽的义务；二是通过保护与进出口货物有关的知识产权来规范进出口秩序。

1. "The PRC Regulation for Customs Protection of Intellectual Property Rights" refers the implementation of the protection by the customs of the exclusive rights to use trademarks, copyrights and the rights related to copyrights, and patent rights that are related to import and export goods and that are protected by PRC laws and administrative regulations. The customs protection of IR rights serves two purposes: first to fulfill her obligation as a WTO member country by protecting the IP rights relating to the import and export goods, and second to regulate the orders of import and export by protecting the IP rights relating to the import and export goods.

2. 我国法律规定，侵犯受法律、行政法规保护的知识产权的货物禁止进出口。

2. The PRC law prohibits the import and export of goods that infringe upon the intellectual property rights (the IPR) under the protection of the law and administrative regulations.

3. 中华人民共和国海关行政处罚实施条例第 25 条规定：“进出口侵犯中华人民共和国法律、行政法规保护的知识产权的货物的，没收侵权货物，并处货物价值 30%以下罚款；构成犯罪的，依法追究刑事责任。需要向海关申报知识产权状况，进出口货物收发货人及其代理人未按照规定向海关如实申报有关知识产权状况，或者未提交合法使用有关知识产权的证明文件的，可以处 5 万元以下罚款。”

3. Article 25 of the PRC Implementation Regulation of Administrative Punishment by the Customs provides that "in case anyone imports or exports goods that have infringed upon the intellectual property rights subject to the protection of the laws and administrative regulations of the People's Republic of China, the infringing goods shall be confiscated, and a fine of less than 30% the value of the goods shall be imposed; if a crime is constituted, he shall be subject to criminal liabilities according to law. Where there is necessity to declare the status of the intellectual property rights to the customs house, the consignee and consignor of the import or export goods and their agents fail to declare to the customs house according to law the relevant status of intellectual property right, or fail to submit the lawfully used certificate of relevant intellectual property right, a fine of less than RMB 50,000 Yuan may be imposed upon them."

4. 知识产权权利人在我国登记和注册了知识产权，还应该在海关作备案登记。我国法律在境内和进出口环节给予权利人两重保护，在海关备案已经登记的知识产权，能更加有效地保护知识产权权利人的利益。

4. The IPR owner should file the record of the IPR at the customs in addition to obtaining the IPR registration with the relevant authority in China. The PRC law offers two layers of protection to the IPR owner within China and the entry-exit frontier ports. Record filing of the IPR at the Chinese customs better protects the interests of the IPR owner.

第二部分 知识产权海关保护的备案

Part Two The record filing of IPR protection at the customs

1. 备案的申请人

1.1 申请知识产权海关保护的备案的申请人应为知识产权权利人或者知识产权权利人委托的代理人。

1. Applicants

1.1 The applicants for record filing at customs for IPR protection shall be the IPR owner or his appointed agent.

2. 知识产权海关保护备案申请的文件及证据

2.1 申请书及其内容包括：

- ①知识产权权利人的名称或者姓名、注册地或者国籍等；
- ②知识产权的名称、内容及其相关信息；
- ③知识产权许可行使状况；
- ④知识产权权利人合法行使知识产权的货物的名称、产地、进出境地海关、进出口商、主要特征、价格等；
- ⑤已知的侵犯知识产权货物的制造商、进出口商、进出境地海关、主要特征、价格等

2. Application documents for customs protection of IPR and evidence

2.1 The application form should include the following information:

- ① The name, place of incorporation or nationality of the owner of IP rights;
- ② The name and contents of the IP rights, and relevant information;
- ③ The status of the use of the IP rights;
- ④ The description, country of origin, entry-exit customs house, importer and exporters, main characteristics and price of the goods in respect of which the owner of the IP rights duly exercises its rights;
- ⑤ The manufacturer, importer and exporter, the entry-exit customs house of the goods of which the IP rights have been infringed upon, main characteristics, prices, etc.

2.2 随附文件、证据

2.2 The attached documentation and the evidence for IP right infringement

3. 知识产权海关保护备案申请的海关受理

3.1 海关总署应当自收到申请人全部申请文件之日起 30 个工作日内作出是否准予备案的决定，并书面通知申请人。

3.2 有下列情形海关总署不予受理：

- ① 申请文件不齐全或者无效的；
- ② 申请人不是知识产权权利人的；
- ③ 知识产权不再受法律、行政法规保护的

3. The customs acceptance of application for customs protection of IPR

3.1 The General Administration of Customs shall, within 30 working days of the date of receipt of all application documents, made a decision on whether to grant approval for record filing, and shall notify the applicant in writing. Where approval for record filing is not granted, the reasons for that shall be stated.

3.2 The General Administration of Customs shall not grant approval for record filing in any of the following circumstances:

- ① the application documents are incomplete or invalid;
- ② the applicant is not the owner of the Intellectual Property Rights; or
- ③ the Intellectual Property Rights are no longer protected by laws or administrative regulations.

4. 知识产权海关保护备案的时效

4.1 备案自海关总署核准备案之日起生效，有效期为 10 年。自备案生效之日起知识产权的有效期不足 10 年的，备案的有效期以知识产权的有效期为准。

4.2 续展备案有效期：在知识产权有效的前提下，知识产权权利人可以在知识产权海关保护备案有效期届满前 6 个月内，向海关总署申请续展备案，每次续展备案的有效期为 10 年。

4.3 知识产权海关保护备案有效期届满而不申请续展或者知识产权不再受法律、行政法规保护的，知识产权海关保护备案随即失效。

4. Validity period for record filing at customs

4.1 A filed record for customs protection of Intellectual Property Rights shall be effective as of the date on which the General Administration of Customs grants approval for record filing, and shall be valid for 10 years. Where the valid period is less than 10 years from the date of record filing to the expiry date of the IP rights, the valid period for record filing shall commence from the date of record filing to the expiry date.

4.2 Where the Intellectual Property Rights are valid, the owner of the Intellectual Property Rights may, within six months prior to the expiration of the term of validity of the filed record for customs protection of Intellectual Property Rights, apply to the General Administration of Customs for an extension of the filed record. The term of validity of each extension of a filed record shall be 10 years.

4.3 Where no application for extension has been made upon the expiration of the term of validity of a filed record for customs protection of Intellectual Property Rights, or the Intellectual Property Rights are no longer protected by laws or administrative regulations, the filed record for customs protection of Intellectual Property Rights shall immediately become void.

5. 知识产权海关保护备案的变更和撤销

5.1 备案知识产权的情况发生改变的，知识产权权利人应当自发生改变之日起30个工作日内，向海关总署办理备案变更手续。

- ① 知识产权权利人的名称；
- ② 注册商标核定使用商品；
- ③ 许可使用注册商标、作品或者实施专利的情况；
- ④ 知识产权权利人的通讯地址、联系人、联系电话等；
- ⑤ 《条例》第七条规定的其他情况。

5. The amendment and revocation of the record filing of the IPR protection at the customs

5.1 Where there is a change in the details of a filed record of Intellectual Property Rights, the owner of the Intellectual Property Rights shall, within 30 working days of the date on which the change occurs, carry out the amendment with the General Administration of Customs.

- ① The name of the IPR owner;
- ② The goods for which the registered trademark is allowed to be used;
- ③ The situations under which licenses are granted for use of trademark, copyrights, and patents;
- ④ The corresponding address, contact person, and phone number of the IPR owner;
- ⑤ The change in particulars as provided under article 7 of the PRC Regulations for Customs Protection of Intellectual Property Rights.

5.2 有下列情形之一的，知识产权权利人应当自备案的知识产权发生改变之日起30个工作日内向海关总署提出注销知识产权海关保护备案的申请并随附有关文件：

- ① 知识产权在备案有效期届满前不再受法律、行政法规保护的；
- ② 备案的知识产权发生转让的。

5.2 Where one of the situations as set out below occurs, the owner of the Intellectual Property Rights shall, within 30 working days of the date on which the change occurs, submit application to cancel the record filing at the General Administration of Customs, and provide the relevant documentation:

- ① The IPR is no longer under the protection of the Chinese law or administrative regulations before its expiry day;
- ② There has been a transfer of the legal ownership of the IPR.

5.3 对属于前款规定情形的，海关总署可以主动或者根据有关利害关系人的申请注销有关知识产权的备案。知识产权权利人在备案有效期内放弃备案的，可以向海关总署申请注销备案。海关总署注销备案，应当书面通知有关知识产权权利人。备案自海关总署注销之日起失效。

5.3 For matters as set out above, the General Administration of Customs can cancel the record filing on its own or upon the application of the IPR owner. The IPR owner can apply for the cancellation of the record filing at the customs within the validity

period of the record filing where the owner of the IPR waives its right to record filing. The GAC should notify the IPR owner of the cancellation in writing. The cancellation of record filing shall take effect upon the cancellation date.

5.4 海关发现知识产权权利人申请知识产权备案未如实提供有关情况或者文件的，海关总署可以撤销其备案。

5.4 Where the customs discovers that the owner of the IP rights have submitted incorrect information or provided false information for purpose of record filing at the customs, the General Administration of Customs may revoke the relevant record filings.

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