

中国的知识产权海关保护制度

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

第四部分 海关对侵权嫌疑货物的调查处理

Part Four The investigation by the customs of the suspected infringing goods

1. 海关扣留有关侵权嫌疑的货物，前提是知识产权权利人申请扣留侵权嫌疑货物并提供担保。海关制发通知和扣留凭单给收发货人。权利人或收发货人可以申请查看货物。收发货人认为其进出口货物未侵犯专利权的，应向海关提出书面说明并附送相关证据，可以在向海关提交放行货物的申请和货物等值担保金后，请求海关放行货物。知识产权人未能在合理期限内向人民法院起诉的，海关退还收发货人担保金；海关对扣留侵权嫌疑货物的调查。海关应当自扣留之日起 30 个工作日内对被扣留的货物是否构成侵犯知识产权进行调查、认定。

1. Given that the IPR owner has requested the customs to seize the goods suspected of infringing the IP rights, and provided the security for the seizure, the customs shall impound the goods in question and issue an impoundment notification to the consignor or consignee. An owner of Intellectual Property Rights and the consignee or consignor may inspect the relevant goods upon the approval of customs. Where the consignee or consignor considers that his goods have not infringed upon the patent rights of the owner, he shall submit a written explanation to customs and attach the relevant evidence, and request the customs to release the goods upon the provision to the customs of a security deposit equal to the value of the goods. Where the owner of the IPR has not institute legal actions in the people's court within a reasonable time period, the customs shall return the security deposit to the consignor or consignee. The customs shall conduct an investigation into the alleged infringement and draw a conclusion to the case within 30 days of the impoundment of the goods suspected of infringing the IP rights.

2. 放行被扣留货物

有下列情形海关可以放行货物：

- ① 海关根据知识产权权利人申请扣留的侵权嫌疑货物，自扣留之日起 20 个工作日内未收到人民法院协助执行通知的；
- ② 海关依职权扣留的侵权嫌疑货物，自扣留之日起 50 个工作日内未收到人民法院协助执行通知，并且经调查不能认定被扣留的侵权嫌疑货物侵犯知识产权的；
- ③ 涉嫌侵犯专利权货物的收发货人在向海关提供与货物等值的担保金后，请求海关放行的，但海关在调查期间认定侵犯有关专利权的除外，（以上担保只适用涉嫌侵犯专利权货物，不适用涉嫌侵犯商标权或者著作权的货物）；
- ④ 海关认为收发货人有充分的证据证明其货物未侵犯知识产权权利人的知识产权的

2. Customs release of the goods impounded

Customs shall release the impounded goods suspected of infringing upon rights in any of the following circumstances:

- ① The customs impounds goods suspected of infringing upon rights following the application by the IPR owner, and has not received the notice to assist in execution from the people's court within 20 working days from the date of impoundment;
- ② The customs impounds goods suspected of infringing upon rights in the course of its daily business, and has not received the notice to assist in execution from the people's court within 50 working days from the date of impoundment, and the customs cannot confirm that the impounded goods suspected of infringing upon rights has infringed upon Intellectual Property Rights after investigation;
- ③ the consignee or consignor of the goods suspected of infringing upon patent rights requests customs to release his goods after providing a security deposit equal to the value of the goods (the provision of security deposit shall apply to goods suspected of infringing patent rights, not to goods suspected of infringing trademarks or copyrights); or
- ④ The customs considers that the consignee or consignor has sufficient evidence to prove that his goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property rights.

3. 没收被扣留的侵权货物

3.1 被扣留的侵权嫌疑货物，经海关调查后认定侵犯知识产权的，予以没收，并应当将侵犯知识产权货物的有关情况书面通知知识产权权利人。

3. Confiscation of the impounded goods

3.1 After investigation, the customs comes to a conclusion that the goods have infringed the IPR. The customs shall confiscate the goods and inform the same to the IPR owner in writing.

3.2 侵权货物没收后的处理

- ① 被没收的侵犯知识产权货物可以用于社会公益事业的，海关应当转交给有关公益机构用于社会公益事业；
- ② 知识产权权利人有收购意愿的，海关可以将没收的侵权货物有偿转让给知识产权权利人；
- ③ 被没收的侵犯知识产权货物无法用于社会公益事业且知识产权权利人无收购意愿的，海关可以在消除侵权特征后依法拍卖；
- ④ 没收货物侵权特征无法消除的，海关应当予以销毁。

3.2 Disposal of the goods confiscated

- ① Where confiscated goods that have infringed upon Intellectual Property Rights can be used for public welfare, the customs shall transfer the goods to the relevant public welfare organizations to be used for public welfare.
- ② Where the owner of the Intellectual Property Rights wishes to purchase the goods, customs may transfer the goods to the owner of the Intellectual Property Rights at a consideration.

- ③ Where confiscated goods that has infringed upon Intellectual Property Rights cannot be used for public welfare and the owner of the Intellectual Property Rights does not wish to acquire the goods, customs may auction the goods according to law after removing the infringing characteristics.
- ④ Where the infringing characteristics cannot be removed, customs shall destroy the goods.

中国税务及投资顾问有限公司
China Tax & Investment Consultants Limited
www.china-tax.net