

<p>中华人民共和国海关关于《中华人民共和国知识产权海关保护条例》的实施办法</p> <p>(经 2009 年 2 月 17 日海关总署署务会议审议通过, 于 2009 年 3 月 3 日海关总署第 183 号令发布, 自 2009 年 7 月 1 日起实施)</p>	<p><b>Rules of the Customs of the People's Republic of China for Implementing the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights</b></p> <p>(Adopted at the Executive Meeting of the General Administration of Customs on February 17, 2009, promulgated by Decree No. 183 of the General Administration of Customs of the People's Republic of China on March 3, 2009, and effective as of <b>July 1, 2009</b>)</p>
<p>第一章 总则</p>	<p>Chapter I General Provisions</p>
<p><b>第一条</b> 为了有效实施《中华人民共和国知识产权海关保护条例》(以下简称《条例》), 根据《中华人民共和国海关法》以及其他法律、行政法规, 制定本办法。</p>	<p><b>Article 1</b> These Rules are formulated in accordance with the <i>Customs Law of the People's Republic of China</i> and other laws and administrative regulations, in order to implement effectively the <i>Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights</i> (hereinafter referred to as the "<i>Regulations</i>").</p>
<p><b>第二条</b> 知识产权权利人请求海关采取知识产权保护措施或者向海关总署办理知识产权海关保护备案的, 境内知识产权权利人可以直接或者委托境内代理人提出申请, 境外知识产权权利人应当由其在境内设立的办事机构或者委托境内代理人提出申请。</p> <p>知识产权权利人按照前款规定委托境内代理人提出申请的, 应当出具规定格式的授权委托书。</p>	<p><b>Article 2</b> Intellectual Property rights holders (IP holders) who request the Customs to take protection measures for their Intellectual Property Rights (IPR) or go through the procedure of recording their IPR with the General Administration of Customs (GAC), may, when they are located in mainland China, file their application directly or entrust an agent established in mainland China to act on their behalf. Where such IP holders are located outside mainland China, they shall file their application through their representative office established in mainland China, or entrust an agent established in mainland China to file the application on their behalf.</p> <p>Where the IP holder entrusts an agent established in mainland China to file his application in</p>

	accordance with the preceding paragraph, he shall produce a power of attorney in a prescribed form.
<p><b>第三条</b> 知识产权权利人及其代理人（以下统称知识产权权利人）请求海关扣留即将进出口的侵权嫌疑货物的，应当根据本办法的有关规定向海关提出扣留侵权嫌疑货物的申请。</p>	<p><b>Article 3</b> When an IP holder or his agent (hereinafter collectively referred to as "the IP holder") requests the Customs to detain suspected infringing goods pending import / export custom clearance, he shall file with the Customs, the application for detention of such goods in accordance with the provisions of these Rules.</p>
<p><b>第四条</b> 进出口货物的收发货人或者其代理人（以下统称收发货人）应当在合理的范围内了解其进出口货物的知识产权状况。海关要求申报进出口货物知识产权状况的，收发货人应当在海关规定的期限内向海关如实申报并提交有关证明文件。</p>	<p><b>Article 4</b> The consignee or the consignor of imported or exported goods or his agent (hereinafter collectively referred to as "the consignee or consignor") shall, to a reasonable extent, have knowledge of the IPR status of his imported or exported goods. Where the Customs require him to declare the IPR status of his imported or exported goods, the consignee or consignor shall truthfully make such declaration and present any relevant evidentiary documents to the Customs within the time limit specified by the Customs.</p>
<p><b>第五条</b> 知识产权权利人或者收发货人向海关提交的有关文件或者证据涉及商业秘密的，知识产权权利人或者收发货人应当向海关书面说明。</p> <p>海关实施知识产权保护，应当保守有关当事人的商业秘密，但海关应当依法公开的信息除外。</p>	<p><b>Article 5</b> If any trade secrets are involved in the relevant documents or evidence submitted to the Customs by either the IP holder, or the consignee or consignor, an explanation of such secrets in writing shall be presented to the Customs by the IP holder, or the consignee or consignor.</p> <p>The Customs shall keep the confidentiality of the trade secrets of the relevant parties when operating the protection of the IPR. But the information which the Customs are obliged to disclose in accordance with the law shall not be included.</p>
<p>第二章 知识产权备案</p>	<p>Chapter II Recordation of Intellectual Property Rights</p>
<p><b>第六条</b> 知识产权权利人向海关总署申请知识产权海关保护备案的，应当向海关总署提交申请书。申请书应当包括以下内容：</p>	<p><b>Article 6</b> When going through the procedures of Customs Recordation of IPR, an IP holder shall submit an application to the GAC. The application shall include the following particulars:</p>

<p>(一) 知识产权权利人的名称或者姓名、注册地或者国籍、通信地址、联系人姓名、电话和传真号码、电子邮箱地址等。</p> <p>(二) 注册商标的名称、核定使用商品的类别和商品名称、商标图形、注册有效期、注册商标的转让、变更、续展情况等；作品的名称、创作完成的时间、作品的类别、作品图片、作品转让、变更情况等；专利权的名称、类型、申请日期、专利权转让、变更情况等。</p> <p>(三) 被许可人的名称、许可使用商品、许可期限等。</p> <p>(四) 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。</p> <p>(五) 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。</p> <p>知识产权权利人应当就其申请备案的每一项知识产权单独提交一份申请书。知识产权权利人申请国际注册商标备案的，应当就其申请的每一类商品单独提交一份申请书。</p>	<ol style="list-style-type: none"> <li>(1) The business name or name, place of registration or nationality, and postal address of the IP holder, the name, telephone and fax numbers, and E-mail address of the contact person, etc.;</li> <li>(2) The name of the registered trademark, the class and the name of the goods designated by the said registered trademark, the trademark specimen, the validity period of registration, any information on the assignment, modification of registration particulars and renewal, etc. of the registered trademark; The name, time of completion, type, picture, information on the assignment and modification of registration particulars, etc. of the copyright works; And, the name, type, date of application, information on the assignment and modification of registration particulars, etc. of the patent right;</li> <li>(3) The name of the licensee, the goods licensed, the term of license, etc. ;</li> <li>(4) The name, place of origin, the Customs at the port of entry/exit, importer/exporter, main features, price, etc. of the authentic goods over which the IP holder lawfully uses his rights; and</li> <li>(5) The manufacturer, importer/exporter, the Customs at the port of entry/exit, main features, price, etc. of the goods known to the IP holder to infringe upon his intellectual property.</li> </ol> <p>The IP holder shall file a separate application form for each of his IPR for which the recordation is applied. Where applying for recordation of an International Registered Trademark, the IP holder shall file a separate application form for recordation of each class of goods covered.</p>
<p><b>第七条</b> 知识产权权利人向海关总署提交备案申请书，应当随附以下文件、证据：</p> <p>(一) 知识产权权利人个人身份证件的复印件、工商营业执照</p>	<p><b>Article 7</b> An IP holder shall attach the following documents and evidence when he files the application for recordation to the GAC:</p> <ol style="list-style-type: none"> <li>(1) A photocopy of personal identification document, or business license or other documents which identifies the IP holder;</li> </ol>

的复印件或者其他注册登记文件的复印件。

(二) 国务院工商行政管理部门商标局签发的《商标注册证》的复印件。申请人经核准变更商标注册事项、续展商标注册、转让注册商标或者申请国际注册商标备案的，还应当提交国务院工商行政管理部门商标局出具的有关商标注册的证明；著作权登记部门签发的著作权自愿登记证明的复印件和经著作权登记部门认证的作品照片。申请人未进行著作权自愿登记的，提交可以证明申请人为著作权人的作品样品以及其他有关著作权的证据；国务院专利行政部门签发的专利证书的复印件。专利授权自公告之日起超过 1 年的，还应当提交国务院专利行政部门在申请人提出备案申请前 6 个月内出具的专利登记簿副本；申请实用新型专利或者外观设计专利备案的，还应当提交由国务院专利行政部门作出的专利权评价报告。

(三) 知识产权权利人许可他人使用注册商标、作品或者实施专利，签订许可合同的，提供许可合同的复印件；未签订许可合同的，提交有关被许可人、许可范围和许可期间等情况的书面说明。

(四) 知识产权权利人合法行使知识产权的货物及其包装的照片。

(五) 已知的侵权货物进出口的证据。知识产权权利人与他人之间的侵权纠纷已经人民法院或者知识产权主管部门处理的，还应当提交有关法律文书的复印件。

(2) A photocopy of the Trademark Registration Certificate issued by the Trademark Office of the Administration for Industry & Commerce under the State Council (TMO); where the applicant has been permitted to modify, renew, transfer the trademark registration, or where the application for recordation concerns an International Registered Trademark, the relevant documents confirming the trademark registration issued by the TMO shall be submitted in addition ;

A photocopy of the certificate of voluntary copyright registration issued by the copyright registration authority, and the photographs of the works confirmed by the copyright registration authority. Where the applicant has not carried out the procedures for voluntary copyright registration of his works, a sample of his works which can prove his ownership of the copyright and other related evidence shall be submitted;

A photocopy of the patent certificate issued by the Patent Administration under the State Council (SIPO). Where the grant of patent has been announced for more than one year, the applicant shall produce a duplicate of the patent register issued, within six months prior to the application for recordation, by the SIPO. Where applying for the recordation of a utility model or a design, the patent right evaluation report made by the SIPO shall also be submitted;

- (3) A photocopy of the contract where the IP holder has signed a license agreement authorizing other parties to use a registered trademark, a copyright work or a patent. Where no written license has been signed, a document explaining the details of the licensee, the scope, term of the license, etc. shall be submitted;
- (4) The photographs of goods and their package on which the IP holder lawfully uses his rights;
- (5) Evidence of known importing or exporting of infringing goods; Where any infringement dispute between the IP holder and other parties has been ruled upon by a People's Court or by the competent IPR administration authority, a photocopy of the relevant legal document shall also be

<p>(六) 海关总署认为需要提交的其他文件或者证据。</p> <p>知识产权权利人根据前款规定向海关总署提交的文件和证据应当齐全、真实和有效。有关文件和证据为外文的，应当另附中文译本。海关总署认为必要时，可以要求知识产权权利人提交有关文件或者证据的公证、认证文书。</p>	<p>submitted; and</p> <p>(6) Any other documents or evidence that the GAC considers necessary to obtain.</p> <p>The documents and evidence submitted by the IP holder to the GAC in accordance with the preceding paragraph shall be complete, truthful and valid. Where the relevant documents and evidence are in a foreign language, they shall be accompanied by a Chinese translation. Where the GAC deems necessary, it may require an IP holder to submit notarization and authentication certificates of the relevant documents or evidence.</p>
<p><b>第八条</b> 知识产权权利人向海关总署申请办理知识产权海关保护备案或者在备案失效后重新向海关总署申请备案的，应当缴纳备案费。知识产权权利人应当将备案费通过银行汇至海关总署指定账号。海关总署收取备案费的，应当出具收据。备案费的收取标准由海关总署会同国家有关部门另行制定并予以公布。</p> <p>知识产权权利人申请备案续展或者变更的，无需再缴纳备案费。</p> <p>知识产权权利人在海关总署核准前撤回备案申请或者其备案申请被驳回的，海关总署应当退还备案费。已经海关总署核准的备案被海关总署注销、撤销或者因其他原因失效的，已缴纳的备案费不予退还。</p>	<p><b>Article 8</b> An IP holder shall pay the recordation fee when applying for the recordation of the right to the GAC, or reapplying for recordation when the recordation has become ineffective. An IP holder shall remit, via his bank, the recordation fee to the account designated by the GAC. Upon receiving the recordation fee, the GAC shall issue a receipt. The rate of recordation fee shall be prescribed separately and announced by the GAC in conjunction with relevant authorities of the State.</p> <p>When applying for the renewal or modification of his recordation, the IP holder shall not need to pay the recordation fee again.</p> <p>Where the IP holder withdraws his application before it is approved by GAC or where his application for recordation is rejected, the GAC shall return the recordation fee to the IP holder. Where a recordation already approved by the GAC is revoked or cancelled by the GAC or becomes ineffective for other reasons, the recordation fee already paid for it shall not be returned.</p>
<p><b>第九条</b> 知识产权海关保护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。</p>	<p><b>Article 9</b> The Recordation of an IPR shall enter into effect on the date of approval by the GAC and shall be valid for a term of 10 years. Where the remaining term of the IPR is less than 10 years after the effective date of the recordation, the recordation term of the IPR shall be adjusted to the term of the IPR.</p>

<p>《条例》施行前经海关总署核准的备案或者核准续展的备案的有效期仍按原有效期计算。</p>	<p>The terms of recordation and renewed recordation approved by the GAC prior to the effectiveness of the <i>Regulations</i> shall remain to be calculated in accordance with their original terms.</p>
<p><b>第十条</b> 在知识产权海关保护备案有效期届满前 6 个月内, 知识产权权利人可以向海关总署提出续展备案的书面申请并随附有关文件。海关总署应当自收到全部续展申请文件之日起 10 个工作日内作出是否准予续展的决定, 并书面通知知识产权权利人; 不予续展的, 应当说明理由。</p> <p>续展备案的有效期自上一届备案有效期满次日起算, 有效期为 10 年。知识产权的有效期自上一届备案有效期满次日起不足 10 年的, 续展备案的有效期以知识产权的有效期为准。</p>	<p><b>Article 10</b> An IP holder may, within six months prior to the expiration of the recordation term of the IPR, apply for the renewal of the recordation by filing a written application together with relevant documents to the GAC. The GAC shall make a decision on whether to grant renewal within 10 working days of receipt all of the renewal application documents. Where the GAC approves the renewal of the recordation, it shall notify the IP holder in writing; where it does not approve the renewal, it shall notify the IP holder in writing and explain the reason thereof.</p> <p>The term of the renewed recordation shall be 10 years, calculated from the day following the expiration of the previous recordation term. Where the term of the IPR is less than 10 years after the day following the expiration of the previous recordation term, the renewal recordation term of the IPR shall be adjusted to the term of the IPR.</p>
<p><b>第十一条</b> 知识产权海关保护备案经海关总署核准后, 按照本办法第六条向海关提交的申请书内容发生改变的, 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提出变更备案的申请并随附有关文件。</p>	<p><b>Article 11</b> After a Recordation of IPR has been approved by the GAC, if any change occurs to the information of the application submitted to the Customs in accordance with Article 6 of these Rules, the IP holder shall, within 30 working days from the date upon which the said change occurs, apply to the GAC for modifying the Recordation and submit relevant documents.</p>
<p><b>第十二条</b> 知识产权在备案有效期届满前不再受法律、行政法规保护或者备案的知识产权发生转让的, 原知识产权权利人应当自备案的知识产权不再受法律、行政法规保护或者转让生效之日起 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。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。</p>	<p><b>Article 12</b> Where an IPR is no longer protected by the law or administrative regulations prior to the expiration of the valid term of its recordation or where a recorded IPR has been transferred, the original holder of the IPR shall, within 30 working days from the date upon which the recorded IPR is no longer protected by the law or administrative regulations or from the effective date of transfer of the IPR, apply to the GAC for withdrawing the Recordation of the IPR and submit relevant documents. Where an IP holder gives up the recordation within the valid term of the recordation, he may apply to</p>

<p>未依据本办法第十一条和本条前款规定向海关总署申请变更或者注销备案，给他人合法进出口造成严重影响的，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。</p> <p>海关总署注销备案，应当书面通知有关知识产权权利人，知识产权海关保护备案自海关总署注销之日起失效。</p>	<p>the GAC for withdrawal of the recordation.</p> <p>Where an IP holder fails to apply to the GAC for modification or withdrawal of the recordation in accordance with Article 11 of these Rules or with the preceding paragraph of this article, and causes serious effects on lawful imports/exports made by others, the GAC may revoke the recordation of the concerned IPR on its own initiative or upon the request of any interested party.</p> <p>The GAC shall notify in writing to the relevant the IP holder the revocation of any recordation. The recordation of the IPR shall become ineffective as of the date of revocation by the GAC.</p>
<p><b>第十三条</b> 海关总署根据《条例》第九条的规定撤销知识产权海关保护备案的，应当书面通知知识产权权利人。</p> <p>海关总署撤销备案的，知识产权权利人自备案被撤销之日起 1 年内就被撤销备案的知识产权再次申请备案的，海关总署可以不予受理。</p>	<p><b>Article 13</b> Where the GAC decides to cancel a recordation of IPR in accordance with Article 9 of the <i>Regulations</i>, the IP holder shall be notified in writing.</p> <p>Within one year from the date of cancellation of an IPR, the GAC may refuse an application for recordation of the same IPR filed by the holder of such IPR.</p>
<p>第三章 依申请扣留</p>	<p>Chapter III Detention pursuant to an Application</p>
<p><b>第十四条</b> 知识产权权利人发现侵权嫌疑货物即将进出口并要求海关予以扣留的，应当根据《条例》第十三条的规定向货物进出境地海关提交申请书。有关知识产权未在海关总署备案的，知识产权权利人还应当随附本办法第七条第一款第（一）、（二）项规定的文件、证据。</p> <p>知识产权权利人请求海关扣留侵权嫌疑货物，还应当向海关提交足以证明侵权事实明显存在的证据。知识产权权利人提交的证据，应当能够证明以下事实：</p>	<p><b>Article 14</b> Where an IP holder discovers that suspected infringing goods are being imported or exported and requests the Customs to detain such goods, he shall file an application, in accordance with Article 13 of the <i>Regulations</i>, with the Customs at the port where the goods are being imported or exported. Where the relevant IPR has not been recorded with the GAC, the IP holder shall submit in addition the documents and evidence specified in Article 7, Paragraph 1, Items (1) and (2) of these Rules.</p> <p>The IP holder, when he requests the Customs to detain the suspected infringing goods, shall provide sufficient evidence proving the obvious existence of the fact of infringement to the Customs. The evidence provided by the IP holder must be sufficient to prove the following facts:</p>

<p>(一) 请求海关扣留的货物即将进出口;</p> <p>(二) 在货物上未经许可使用了侵犯其商标专用权的商标标识、作品或者实施了其专利。</p>	<p>(1) The goods requested to be detained by the Customs are going through import or export; and</p> <p>(2) The trademark, copyright works or patent have been used on the goods without the consent of the IPR holder.</p>
<p><b>第十五条</b> 知识产权权利人请求海关扣留侵权嫌疑货物,应当在海关规定的期限内向海关提供相当于货物价值的担保。</p>	<p><b>Article 15</b> Where applying for detaining suspected infringing goods by the Customs, the IP holder shall deposit with the Customs, within the period specified by the Customs, a bond equivalent to the value of the goods.</p>
<p><b>第十六条</b> 知识产权权利人提出的申请不符合本办法第十四条的规定或者未按照本办法第十五条的规定提供担保的,海关应当驳回其申请并书面通知知识产权权利人。</p>	<p><b>Article 16</b> Where the application filed by an IP holder is not in conformity with Article 14 of these Rules, or where the bond is not deposited in conformity with Article 15 of these Rules, the Customs shall reject the application and notify in writing the IP holder of such rejection.</p>
<p><b>第十七条</b> 海关扣留侵权嫌疑货物的,应当将货物的名称、数量、价值、收发货人名称、申报进出口日期、海关扣留日期等情况书面通知知识产权权利人。</p> <p>经海关同意,知识产权权利人可以查看海关扣留的货物。</p>	<p><b>Article 17</b> The Customs, when detaining suspected infringing goods, shall notify in writing the IP holder with such details as description, quantity and value of the goods, name of the consignee or consignor, date of import or export declaration and date of detention by the Customs, etc.</p> <p>With consent of the Customs, the IP holder may inspect the goods detained by the Customs.</p>
<p><b>第十八条</b> 海关自扣留侵权嫌疑货物之日起 20 个工作日内,收到人民法院协助扣押有关货物书面通知的,应当予以协助;未收到人民法院协助扣押通知或者知识产权权利人要求海关放行有关货物的,海关应当放行货物。</p>	<p><b>Article 18</b> Where the Customs receive, within 20 working days from the date on which they have detained suspected infringing goods, a written notice from a People’s Court requesting assistance for the detention of such goods, the Customs shall provide assistance .Where they receive no such notice from a People’s Court or where the IP holder requests them to release the relevant goods, the Customs shall release the goods.</p>
<p><b>第十九条</b> 海关扣留侵权嫌疑货物的,应当将扣留侵权嫌疑货物</p>	<p><b>Article 19</b> When the Customs detain suspected infringing goods, they shall serve on the consignee or consignor a written notification of detention of the suspected infringing goods and a Customs</p>

<p>的扣留凭单送达收发货人。</p> <p>经海关同意，收发货人可以查看海关扣留的货物。</p>	<p>Receipt for the detention of the suspected infringing goods.</p> <p>With consent of the Customs, the consignee or consignor may inspect the relevant goods detained.</p>
<p><b>第二十条</b> 收发货人根据《条例》第十九条的规定请求放行其被海关扣留的涉嫌侵犯专利权货物的，应当向海关提出书面申请并提供与货物等值的担保金。</p> <p>收发货人请求海关放行涉嫌侵犯专利权货物，符合前款规定的，海关应当放行货物并书面通知知识产权权利人。</p> <p>知识产权权利人就有关专利侵权纠纷向人民法院起诉的，应当在前款规定的海关书面通知送达之日起 30 个工作日内向海关提交人民法院受理案件通知书的复印件。</p>	<p><b>Article 20</b> If, pursuant to Article 19 of the <i>Regulations</i>, the consignee or consignor requests the Customs to release the detained goods suspected of infringing a patent, he shall file a written application for releasing the goods and, in addition, deposit with the Customs a bond equivalent to the value of the goods.</p> <p>Where the consignee or consignor requests the Customs to release the goods suspected of infringing the patent and such request is in conformity with the preceding paragraph, the Customs shall release the goods and notify in writing the IP holder.</p> <p>Within 30 working days from the date of written notification mentioned in the preceding paragraph, the IP holder, who has brought a lawsuit before a People’s Court in respect of the patent infringement, shall submit to the Customs a photocopy of the notice of case acceptance issued by the People’s Court.</p>
<p>第四章 依职权调查处理</p>	<p>Chapter IV <i>Ex Officio</i> Action</p>
<p><b>第二十一条</b> 海关对进出口货物实施监管，发现进出口货物涉及在海关总署备案的知识产权且进出口商或者制造商使用有关知识产权的情况未在海关总署备案的，可以要求收发货人在规定期限内申报货物的知识产权状况和提交相关证明文件。</p> <p>收发货人未按照前款规定申报货物知识产权状况、提交相关证明文件或者海关有理由认为货物涉嫌侵犯在海关总署备案的知识产权的，海关应当中止放行货物并书面通知知识产权权利人。</p>	<p><b>Article 21</b> Where the Customs discover, when performing their supervision and control over imported or exported goods, any goods related to an IPR recorded with the GAC while no information has been recorded with the GAC concerning the authorized use of the IPR by such importer/exporter or manufacturer, they may require the consignee or consignor to declare the IPR status of the goods within the specified time limit, and to submit relevant evidentiary documents.</p> <p>Where the consignee or consignor fails to declare the IPR status of the goods or fails to submit the relevant evidentiary documents in accordance with the preceding paragraph, or where the Customs</p>

	<p>have reason to believe that the relevant goods are suspected of infringing an IPR recorded with the GAC, the GAC shall suspend the release of the goods and notify the IP holder in writing.</p>
<p><b>第二十二条</b> 知识产权权利人应当在本办法第二十一条规定的海关书面通知送达之日起 3 个工作日内按照下列规定予以回复：</p> <p>（一）认为有关货物侵犯其在海关总署备案的知识产权并要求海关予以扣留的，向海关提出扣留侵权嫌疑货物的书面申请并按照本办法第二十三条或者第二十四条的规定提供担保；</p> <p>（二）认为有关货物未侵犯其在海关总署备案的知识产权或者不要求海关扣留侵权嫌疑货物的，向海关书面说明理由。</p> <p>经海关同意，知识产权权利人可以查看有关货物。</p>	<p><b>Article 22</b> The IP holder shall respond, within three working days from the date of service by the Customs of the written notification mentioned in Article 21 of these Rules, in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>(1) Where he believes that the goods infringe his IPR recorded with the GAC and requests the Customs to perform detention, he shall file with the Customs a written application for detention of the suspected infringing goods and shall deposit a bond in accordance with Article 23 or 24 of these Rules,</li> <li>(2) Where he believes that the relevant goods do not infringe his IPR recorded with the GAC or does not request the Customs to perform detention, he shall explain the reasons in writing to the Customs.</li> </ol> <p>With consent of the Customs, the IP holder may inspect the relevant goods.</p>
<p><b>第二十三条</b> 知识产权权利人根据本办法第二十二条第一款第（一）项的规定请求海关扣留侵权嫌疑货物的，应当按照以下规定向海关提供担保：</p> <p>（一）货物价值不足人民币 2 万元的，提供相当于货物价值的担保；</p> <p>（二）货物价值为人民币 2 万至 20 万元的，提供相当于货物价值 50% 的担保，但担保金额不得少于人民币 2 万元；</p>	<p><b>Article 23</b> Where requesting the Customs to detain the suspected infringing goods in accordance with Article 22, Paragraph 1, Item (1) of these Rules, an IP holder shall deposit a bond with the Customs in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>(1) Where the value of goods is below RMB 20,000 Yuan, a bond equivalent to the value of the goods;</li> <li>(2) Where the value of goods is above RMB 20,000 Yuan but below RMB 200,000 Yuan, a bond not to be less than RMB 20,000 Yuan up to 50% of the value of the goods. or</li> </ol>

<p>(三) 货物价值超过人民币 20 万元的, 提供人民币 10 万元的担保。</p> <p>知识产权权利人根据本办法第二十二条第一款第(一)项的规定请求海关扣留涉嫌侵犯商标专用权货物的, 可以依据本办法第二十四条的规定向海关总署提供总担保。</p>	<p>(3) Where the value of goods is above RMB 200,000 Yuan, a bond of RMB 100,000 Yuan.</p> <p>When requesting the Customs to detain goods suspected of infringing the exclusive right of a registered trademark in accordance with Article 22, Paragraph 1, Item (1) of these Rules, an IP holder may provide a general bond with the GAC in accordance with Article 24 of these Rules.</p>
<p><b>第二十四条</b> 在海关总署备案的商标专用权的知识产权权利人, 经海关总署核准可以向海关总署提交银行或者非银行金融机构出具的保函, 为其向海关申请商标专用权海关保护措施提供总担保。</p> <p>总担保的担保金额应当相当于知识产权权利人上一年度向海关申请扣留侵权嫌疑货物后发生的仓储、保管和处置等费用之和; 知识产权权利人上一年度未向海关申请扣留侵权嫌疑货物或者仓储、保管和处置等费用不足人民币 20 万元的, 总担保的担保金额为人民币 20 万元。</p> <p>自海关总署核准其使用总担保之日起至当年 12 月 31 日, 知识产权权利人根据《条例》第十六条的规定请求海关扣留涉嫌侵犯其已在海关总署备案的商标专用权的进出口货物的, 无需另行提供担保, 但知识产权权利人未按照《条例》第二十五条的规定支付有关费用或者未按照《条例》第二十九条的规定承担赔偿责任, 海关总署向担保人发出履行担保责任通知的除外。</p>	<p><b>Article 24</b> Subject to approval by the GAC, the IP holder who has recorded a registered trademark with the GAC may submit to the GAC a letter of guarantee issued by a bank or a non-banking financial institution to provide the general bond for his applications to the Customs for taking Customs protection on his exclusive right of the registered trademark.</p> <p>The amount of the general bond shall be equivalent to the sum of the expenses relating to warehousing, storage, disposal, etc. incurred in the previous year as a result of the IP holder applying to the Customs for detention of suspected infringing goods. Where the IP holder has not applied to the Customs for detention of suspected infringing goods in the previous year or where the sum of the expenses relating to warehousing, storage, disposal, etc. is less than RMB 200,000 Yuan, the amount of the general bond shall be RMB 200,000 Yuan.</p> <p>During the period starting from the date of the GAC's approval of the general bond until the 31st of December of the year concerned, the IP holder shall not need to provide a bond when he applies to the Customs for detention of imported or exported goods suspected of infringing his exclusive right to use a trademark recorded with the GAC in accordance with Article 16 of the <i>Regulations</i>. However, if the IP holder fails to pay the fee as stipulated in Article 25 of the <i>Regulations</i> or fails to undertake compensation liability as stipulated in Article 29 of the <i>Regulations</i>, and the GAC has served a notice of fulfillment of bond liabilities on the guarantor, the exoneration to deposit a bond stipulated in the first sentence of this article shall not apply.</p>
<p><b>第二十五条</b> 知识产权权利人根据本办法第二十二条第一款第</p>	<p><b>Article 25</b> Where an IP holder has filed an application in conformity with Article 22, Paragraph 1,</p>

<p>(一) 项的规定提出申请并根据本办法第二十三条、第二十四条的规定提供担保的, 海关应当扣留侵权嫌疑货物并书面通知知识产权权利人; 知识产权权利人未提出申请或者未提供担保的, 海关应当放行货物。</p>	<p>Item (1) of these Rules and has deposited a bond in accordance with Articles 23 and 24 of these Rules, the Customs shall detain the suspected infringing goods and notify the IP holder in writing; The Customs shall release the goods where the IP holder fails to either file an application or deposit a bond.</p>
<p><b>第二十六条</b> 海关扣留侵权嫌疑货物的, 应当将扣留侵权嫌疑货物的扣留凭单送达收发货人。</p> <p>经海关同意, 收发货人可以查看海关扣留的货物。</p>	<p><b>Article 26</b> When detaining suspected infringing goods, the Customs shall serve on the consignee or consignor a written notification of detention of the suspected infringing goods.</p> <p>Subject to approval by the Customs, the consignee or consignor may inspect the goods detained by the Customs.</p>
<p><b>第二十七条</b> 海关扣留侵权嫌疑货物后, 应当依法对侵权嫌疑货物以及其他有关情况进行调查。收发货人和知识产权权利人应当对海关调查予以配合, 如实提供有关情况和证据。</p> <p>海关对侵权嫌疑货物进行调查, 可以请求有关知识产权主管部门提供咨询意见。</p> <p>知识产权权利人与收发货人就海关扣留的侵权嫌疑货物达成协议, 向海关提出书面申请并随附相关协议, 要求海关解除扣留侵权嫌疑货物的, 海关除认为涉嫌构成犯罪外, 可以终止调查。</p>	<p><b>Article 27</b> After they have detained the suspected infringing goods, the Customs shall, in accordance with the law, conduct investigation on the suspected infringing goods as well as other relevant circumstances. The consignee or consignor and the IP holder shall cooperate with the Customs investigation and shall truthfully provide relevant information and evidence.</p> <p>When investigating on the suspected infringing goods, the Customs may request the competent authorities of IPR to provide advice.</p> <p>Where the IP holder reaches an agreement with the consignee or consignor over the suspected infringing goods detained by the Customs and files a written application, together with the relevant agreement, requesting the Customs to release the suspected infringing goods from detention, the Customs may terminate their investigations unless they believe the relevant goods constitute a suspected crime.</p>
<p><b>第二十八条</b> 海关对扣留的侵权嫌疑货物进行调查, 不能认定货物是否侵犯有关知识产权的, 应当自扣留侵权嫌疑货物之日起 30 个工作日内书面通知知识产权权利人和收发货人。</p>	<p><b>Article 28</b> Where they are unable to determine, after investigation, whether the detained suspected infringing goods infringe the relevant IPR, the Customs shall, within 30 working days from the date on which the suspected infringing goods are detained, inform the IP holder and the</p>

<p>海关不能认定货物是否侵犯有关专利权的，收发货人向海关提供相当于货物价值的担保后，可以请求海关放行货物。海关同意放行货物的，按照本办法第二十条第二款和第三款的规定办理。</p>	<p>consignee or consignor by serving a written notice to this effect. Where the Customs cannot determine whether the goods infringe the relevant patent right, the consignee or consignor may, after having provided the Customs with a bond equivalent to the value of the goods, request the Customs to release the goods. Where the Customs agree to release the goods, the matter shall be handled in accordance with Article 20, Paragraphs 2 and 3 of these Rules.</p>
<p><b>第二十九条</b> 对海关不能认定有关货物是否侵犯其知识产权的，知识产权权利人可以根据《条例》第二十三条的规定向人民法院申请采取责令停止侵权行为或者财产保全的措施。</p> <p>海关自扣留侵权嫌疑货物之日起 50 个工作日内收到人民法院协助扣押有关货物书面通知的，应当予以协助；未收到人民法院协助扣押通知或者知识产权权利人要求海关放行有关货物的，海关应当放行货物。</p>	<p><b>Article 29</b> Where the Customs are unable to determine whether the goods infringe the IPR, the IP holder may apply to a People’s Court for a ruling ordering the cessation of the infringing act or a ruling of property preservation in accordance with Article 23 of the <i>Regulations</i>.</p> <p>Where receiving, within 50 working days from the date on which the suspected infringing goods are detained, a written notice from the People’s Court requesting for assistance in detaining the relevant goods, the Customs shall provide such assistance. Where the Customs receives no notice for assistance in detention from the People’s Court or the IP holder requests the Customs to release the relevant goods, the Customs shall release the goods.</p>
<p><b>第三十条</b> 海关作出没收侵权货物决定的，应当将下列已知情况书面通知知识产权权利人：</p> <p>（一）侵权货物的名称和数量；</p> <p>（二）收发货人名称；</p> <p>（三）侵权货物申报进出口日期、海关扣留日期和处罚决定生效日期；</p> <p>（四）侵权货物的启运地和指运地；</p> <p>（五）海关可以提供的其他与侵权货物有关的情况。</p> <p>人民法院或者知识产权主管部门处理有关当事人之间的侵权纠</p>	<p><b>Article 30</b> Where the Customs decide to confiscate infringing goods, the IPR holder shall be informed in writing of the following known details:</p> <ol style="list-style-type: none"> <li>(1) Description and quantity of the infringing goods;</li> <li>(2) Name of the consignee or consignor;</li> <li>(3) Date of import or export declaration of the infringing goods, date of detention by the Customs and date of effectiveness of the Customs’ punishment decision;</li> <li>(4) Place of departure and destination of the infringing goods; and</li> </ol>

<p>纷，需要海关协助调取与进出口货物有关的证据的，海关应当予以协助。</p>	<p>(5) Other information relating to the infringing goods that the Customs can provide.</p> <p>Where a People's Court or another competent IPR administrative authority, when handling an infringement dispute between the relevant parties, requires any assistance from the Customs in obtaining evidence relating to the imported or exported goods, the Customs shall provide such assistance.</p>
<p><b>第三十一条</b> 海关发现个人携带或者邮寄进出境的物品，涉嫌侵犯《条例》第二条规定的知识产权并超出自用、合理数量的，应当予以扣留，但旅客或者收寄件人向海关声明放弃并经海关同意的除外。</p> <p>海关对侵权物品进行调查，知识产权权利人应当予以协助。进出境旅客或者进出境邮件的收寄件人认为海关扣留的物品未侵犯有关知识产权或者属于自用的，可以向海关书面说明有关情况并提供相关证据。</p>	<p><b>Article 31</b> The Customs shall detain the inward or outward articles carried or mailed by individuals which are both in excess of the reasonable quantity for personal use and suspected of infringing the IPR specified in Article 2 of the <i>Regulations</i>, unless the passenger or the sender or recipient declares abandonment of the goods to the Customs and the Customs agree to it.</p> <p>The IP holder shall provide assistance to the Customs when they are investigating the infringing articles. When they consider that the goods detained by the Customs do not infringe the relevant IPR or are for personal use, the entering/exiting passenger or the sender or recipient of the inward/outward postal matters may explain to the Customs the relevant situation in writing and submit relevant evidence.</p>
<p><b>第三十二条</b> 进出口货物或者进出境物品经海关调查认定侵犯知识产权，根据《条例》第二十七条第一款和第二十八条的规定应当由海关予以没收，但当事人无法查清的，自海关制发有关公告之日起满3个月后可由海关予以收缴。</p> <p>进出口侵权行为有犯罪嫌疑的，海关应当依法移送公安机关。</p>	<p><b>Article 32</b> In accordance with Article 27, Paragraph 1 and Article 28 of the <i>Regulations</i>, the Customs shall confiscate imported/exported goods or inward/outward articles which, after investigation, are determined as infringing an IPR. Where the parties concerned cannot be specified, the Customs shall confiscate the concerned goods after 3 full months of serving a relevant public notice.</p> <p>Where an infringing act of import/export is suspected of crime, the Customs shall hand over the case to the public security agencies according to law.</p>

第五章 货物处置和费用	Chapter V Disposal of Goods and Relevant Expenses
<p><b>第三十三条</b> 对没收的侵权货物，海关应当按照下列规定处置：</p> <p>（一）有关货物可以直接用于社会公益事业或者知识产权权利人有收购意愿的，将货物转交给有关公益机构用于社会公益事业或者有偿转让给知识产权权利人；</p> <p>（二）有关货物不能按照第（一）项的规定处置且侵权特征能够消除的，在消除侵权特征后依法拍卖。拍卖货物所得款项上交国库；</p> <p>（三）有关货物不能按照第（一）、（二）项规定处置的，应当予以销毁。</p> <p>海关拍卖侵权货物，应当事先征求有关知识产权权利人的意见。海关销毁侵权货物，知识产权权利人应当提供必要的协助。有关公益机构将海关没收的侵权货物用于社会公益事业以及知识产权权利人接受海关委托销毁侵权货物的，海关应当进行必要的监督。</p>	<p><b>Article 33</b> The Customs shall dispose of the confiscated infringing goods in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>(1) Where the relevant goods can be directly used for public welfare undertakings or if the IP holder intends to purchase the goods, they shall be handed over to the relevant public welfare organization for use in public welfare undertakings or sold to the IP holder;</li> <li>(2) Where the relevant goods cannot be disposed of in accordance with Item (1) but their infringing features can be removed, the goods shall be auctioned after removal of their infringing features; the money obtained from the auction of the goods shall be turned over to the State Treasury; or</li> <li>(3) Where the relevant goods cannot be disposed of in accordance with Item (1) or (2), they shall be destroyed.</li> </ol> <p>The Customs shall seek the opinion of the relevant IP holder prior to auctioning the infringing goods. The IP holder shall provide necessary assistance when the Customs destroy the infringing goods. When the relevant public welfare organization uses the infringing goods confiscated by the Customs in public welfare undertakings, or when the IP holder is entrusted by the Customs, to destroy the infringing goods, the Customs shall exercise the necessary supervision.</p>
<p><b>第三十四条</b> 海关协助人民法院扣押侵权嫌疑货物或者放行被扣留货物的，知识产权权利人应当支付货物在海关扣留期间的仓储、保管和处置等费用。</p> <p>海关没收侵权货物的，知识产权权利人应当按照货物在海关扣留后的实际存储时间支付仓储、保管和处置等费用。但海关自没收侵权货物的决定送达收发货人之日起 3 个月内不能完成货</p>	<p><b>Article 34</b> Where the Customs assist a People’s Court in detaining suspected infringing goods or releasing detained goods, the IP holder shall pay the expenses for warehousing, storage, disposal, etc., of the goods during the period when they are detained by the Customs.</p> <p>If the Customs confiscate the infringing goods, the IP holder shall pay the expenses for warehousing, storage, disposal, etc. of the goods for the actual period of time when they are stored after their detention by the Customs. However, if the Customs fail to complete the disposal of the goods within</p>

<p>物处置，且非因收发货人申请行政复议、提起行政诉讼或者货物处置方面的其他特殊原因导致的，知识产权权利人不需支付3个月后的有关费用。</p> <p>海关按照本办法第三十三条第一款第（二）项的规定拍卖侵权货物的，拍卖费用的支出按照有关规定办理。</p>	<p>three months from the date on which the decision to confiscate the infringing goods is served on the consignee or consignor, and such failure is not due to the consignee or consignor applying for administrative reconsideration, filing administrative litigation or other special reason relating to the disposal of the goods, the IP holder shall not be required to pay the relevant expenses incurred after the three months.</p> <p>If the Customs auction the infringing goods in accordance with Article 33, Paragraph 1, Item (2) of these Rules, the auction expenses shall be handled in accordance with relevant regulations.</p>
<p><b>第三十五条</b> 知识产权权利人未按照本办法第三十四条的规定支付有关费用的，海关可以从知识产权权利人提交的担保金中扣除有关费用或者要求担保人履行担保义务。</p> <p>海关没收侵权货物的，应当在货物处置完毕并结清有关费用后向知识产权权利人退还担保金或者解除担保人的担保责任。</p> <p>海关协助人民法院扣押侵权嫌疑货物或者根据《条例》第二十四条第（一）、（二）、（四）项的规定放行被扣留货物的，收发货人可就知识产权权利人提供的担保向人民法院申请财产保全。海关自协助人民法院扣押侵权嫌疑货物或者放行货物之日起20个工作日内，未收到人民法院就知识产权权利人提供的担保采取财产保全措施的协助执行通知的，海关应当向知识产权权利人退还担保金或者解除担保人的担保责任；收到人民法院协助执行通知的，海关应当协助执行。</p>	<p><b>Article 35</b> Where the IP holder fails to pay the relevant expenses in accordance with Article 34 of these Rules, the Customs shall be entitled to deduct the relevant expenses from the bond provided by the IP holder or demand that the guarantor performs its guaranteed obligations.</p> <p>Where the Customs confiscate infringing goods, the Customs shall refund the bond to the IP holder or shall release the guarantee liabilities after disposal of the goods has been completed and the relevant expenses have been settled.</p> <p>Where the Customs assist a People’s Court in detaining suspected infringing goods or releasing detained goods in accordance with Article 24 Items (1), (2) and (4) of the <i>Regulations</i>, the consignee or consignor may apply to the People’s Court for preservation of property relating to the bond provided by the IP holder. Where, within 20 working days from the date on which the Customs assist the People’s Court in detaining the suspected infringing goods or releasing the detained goods, the Customs receive no notice from the People’s Court for assistance in enforcing property preservation measures relating to the bond provided by the IP holder, they shall refund the bond to the IP holder or relieve the guarantor of its guarantee liabilities. If they receive a petition for assistance in enforcement from the People’s Court, they shall provide such assistance.</p>

<p><b>第三十六条</b> 海关根据《条例》第十九条的规定放行被扣留的涉嫌侵犯专利权的货物后，知识产权权利人按照本办法第二十条第三款的规定向海关提交人民法院受理案件通知书复印件的，海关应当根据人民法院的判决结果处理收发货人提交的担保金；知识产权权利人未提交人民法院受理案件通知书复印件的，海关应当退还收发货人提交的担保金。对知识产权权利人向海关提供的担保，收发货人可以向人民法院申请财产保全，海关未收到人民法院对知识产权权利人提供的担保采取财产保全措施的协助执行通知的，应当自处理收发货人提交的担保金之日起 20 个工作日后，向知识产权权利人退还担保金或者解除担保人的担保责任；收到人民法院协助执行通知的，海关应当协助执行。</p>	<p><b>Article 36</b> Where the IP holder, in accordance with Article 20 Paragraph 3 of these Rules, presents to the Customs a photocopy of the case acceptance notice issued by a People’s Court’s after the Customs, in accordance with Article 19 of the <i>Regulations</i>, have released the detained goods suspected of infringing patent, the Customs shall, in accordance with the adjudication of the People’s Court, dispose of the bond provided by the consignee or consignor; if the IP holder fails to present a photocopy of the case acceptance notice issued by a People’s Court, the Customs shall refund the bond to the consignee or consignor. The consignee or consignor may apply to the People’s Court for property preservation relating to the bond provided by the IP holder to the Customs. If the Customs receive no notice from the People’s Court for assistance in enforcing property preservation measures relating to the bond provided by the IP holder, they shall refund the bond to the IP holder or relieve the guarantor of its guarantee liabilities within 20 working days of the disposal of the bond provided by the consignee or consignor. When receiving a notice for assistance in enforcement from the People’s Court, the Customs shall provide such assistance.</p>
<p>第六章 附则</p>	<p>Chapter VI Supplementary Provisions</p>
<p><b>第三十七条</b> 海关参照本办法对奥林匹克标志和世界博览会标志实施保护。</p>	<p><b>Article 37</b> The Customs shall undertake protection of the Olympic logo and the World Expo logo with reference to these Rules.</p>
<p><b>第三十八条</b> 在本办法中，“担保”指担保金、银行或者非银行金融机构保函。</p>	<p><b>Article 38</b> In these Rules, the term “bond” means money of bond or letter of guarantee provided by a bank or a non-banking financial institution.</p>
<p><b>第三十九条</b> 本办法中货物的价值由海关以该货物的成交价格为基础审查确定。成交价格不能确定的，货物价值由海关依法估定。</p>	<p><b>Article 39</b> The value of goods in these Rules shall be examined and determined by the Customs on the basis of the transaction value of the goods. If the transaction value cannot be determined, the value of goods shall be estimated by the Customs in accordance with the law.</p>

<p><b>第四十条</b> 本办法第十七条、第二十一条、二十八条规定的海关书面通知可以采取直接、邮寄、传真或者其他方式送达。</p>	<p><b>Article 40</b> Written Customs notices as specified in Articles 17, 21 and 28 of these Rules may be served directly, by mail, by facsimile or other ways.</p>
<p><b>第四十一条</b> 本办法第二十条第三款和第二十二条第一款规定的期限自海关书面通知送达之日的次日起计算。期限的截止按照以下规定确定：</p> <p>（一）知识产权权利人通过邮局或者银行向海关提交文件或者提供担保的，以期限到期日 24 时止；</p> <p>（二）知识产权权利人当面向海关提交文件或者提供担保的，以期限到期日海关正常工作时间结束止。</p>	<p><b>Article 41</b> The time limits as specified in Article 20, Paragraph 3 and Article 22, Paragraph 1 of these Rules shall be calculated from the following day of the date upon which the written Customs notice is served. The deadline of the time limits shall be determined in accordance with the following provisions:</p> <p>(1) Where the IP holder presents a document or provides bond to the Customs via the post office or a bank, the 24th hour of the date due shall be taken as the deadline; or</p> <p>(2) Where the IP holder submits a document or provides bond to the Customs in person, the end of the normal office hours of the Customs on the expiry date of the time limit shall be taken as the deadline.</p>
<p><b>第四十二条</b> 知识产权权利人和收发货人根据本办法向海关提交有关文件复印件的，应当将复印件与文件原件进行核对。经核对无误后，应当在复印件上加注“与原件核对无误”字样并予以签章确认。</p>	<p><b>Article 42</b> Where the IP holder or a consignee or consignor is to submit a photocopy of a relevant document to the Customs pursuant hereto, he shall verify such photocopy against the original. Once the photocopy has been verified as being in order, the words “True Copy” shall be noted on the photocopy, which shall then be signed and/or sealed in confirmation.</p>
<p><b>第四十三条</b> 本办法自 2009 年 7 月 1 日起施行。2004 年 5 月 25 日海关总署令第 114 号公布的《中华人民共和国海关关于〈中华人民共和国知识产权海关保护条例〉的实施办法》同时废止。</p>	<p><b>Article 43</b> These Rules shall go into effect as of July 1, 2009. The <i>Rules of the Customs of the People’s Republic of China Concerning Implementing Protection of Intellectual Property Rights</i> promulgated as Decree No. 114 of the General Administration of Customs on May 25, 2004 shall be repealed simultaneously.</p>

\*These rules are translated by Wan Hui Da, the use of this translation are permitted provided that Wan Hui Da is indicated as the source. In case of discrepancy, the Chinese version shall prevail.