

Intellectual Property - China

Revised regulations on customs protection of IP rights

Contributed by [Wan Hui Da Law Firm & Intellectual Property Agency](#)

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The State Council recently released the newly revised Regulations on Customs Protection of Intellectual Property Rights, which came into effect on April 1 2010.

The new version of the regulations makes changes in five areas; most are favourable to IP owners. However, above all the new version underlines the importance of ensuring that changes of information relating to IP rights and their owners are recorded within the required time. The key points are as follows:

- Changes of information relating to IP owners must be recorded within 30 days. The scope of information has been enlarged to include all information on IP rights recordation. Failure to perform this obligation carries a penalty. In addition to renewal and invalidation information, further details (eg, contact details and information about authorized dealers) must be recorded promptly. Otherwise, in the event of incorrect detention, the General Administration of Customs can revoke the recordation *ex officio* or at an interested party's request.
- The time bar for applying for an injunction for property preservation has been extended. Instead of applying before filing a lawsuit, IP owners can now apply to a competent court at any time after requesting that Customs seize the counterfeit items. The new regulation gives IP owners enough time to assess the need for such measures, as well as the risks involved.
- *Ex post facto* authorization is allowed. If a rights owner has settled a case with the counterfeiter before Customs has rendered a decision, the rights owner may withdraw the detention application and request the release of goods in question, which are then regarded as non-infringing. This revision reflects the general theory that IP rights are private rights and that a rights owner has a free hand in exercising them. However, virtually no Customs officer would encourage IP owners to put this revision into practice. It is obvious that abuse of *ex post facto* authorization might affect the efficiency of *ex officio* customs seizures.
- Auctions of imported infringing goods are prohibited, even once the infringing features of the product have been removed. The change is the result of the IP dispute between China and the United States, which began in 2007 and was concluded by a World Trade Organization panel in 2009. It incorporates the principle set out in the fourth sentence of Article 46 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs); however, it regulates only imported goods, as the TRIPs Agreement does not require that exports be controlled in this way. As IP infringement by import normally accounts for only an extremely small percentage of all IP infringement detected by Customs, this change will not have major effect on customs auction practices.
- Instead of simply being confiscated, counterfeits that exceed the personal use limit and are detected in baggage or mail can result in the infringer being penalized. This change aims to curb the rapid rise in the export of counterfeit goods by mail. However, as the real-name system is not yet well established in the Chinese postal service, at present this new regulation is likely to remain merely a good intention.

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