

CHINA CUSTOMS INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

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The following is a brief introduction to China's intellectual property organization, obligations, and legal protections.

A. China's Intellectual Property Rights Organization

The State Council is at the top of the structure of Intellectual Property Rights Custom Administrative Enforcement in China. Below this top level are the Customs General Administration and the Guangdong Sub-Administration. These entities are responsible for the forty-one major Customs Houses and the 291 Port Customs Offices.

B. International Obligations

These government bodies are charged with the responsibility of monitoring imports and exports. They gather trade statistics, investigate customs fraud, and assess duties on imported goods. China is committed to the enforcement of intellectual property rights (IPRs). Its status as a signatory of international conventions such as the Madrid Agreement of International Registration of Marks and the Paris Convention governing well-known marks, attest to this priority. The 1995 United States-China Intellectual Property Rights Convention lessens the risk of serious conflicts arising between these two nations and works towards reconciling differences.

C. Patent Protection

The Chinese government awards and respects patents for inventions, utility models, and designs. The source for this protection is the Patent Law of the People's Republic of China—enacted April 1, 1985 and amended September 4, 1992.

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D. Copyright Protection

Copyrights are awarded for written works, musical, dramatic, cinematic, and video works, as well as fine arts, photographic works, drawings of designs, maps, and computer software. The sources for Chinese copyright law are the Copyright Law of the People's Republic of China—enacted June 1, 1991, and the Berne Convention.

INTELLECTUAL PROPERTY RIGHTS RECORDATION, INFRINGEMENT, AND PUNISHMENT

A. IPR Recordation

The procedure for IPR recordation is as follows: The holder of the intellectual property right makes a request to the Customs General Administration (CGA). The holder must fill out a written application, provide certificates of the Intellectual Property right and of company registration, include a sum of 1,000 yuan (approximately US\$ 110), and deliver it to the IPR Division of the Customs General Administration.

The CGA responds with an acceptance or denial of the request within thirty days. A recording is valid for seven years and is renewable if the IPR holder makes a renewal application. The following breakdown shows the number of recordings made by the CGA as of June 30, 1997:

Trademark	489
Patent	126
Copyright	11
Total	626

B. Petition for Suspension of Release

The IPR holder may petition for the suspension of release of the right. To do so, the holder must write to the relevant Major Customs House, which will be either the import or export port. The IPR holder must also write to the importer or exporter of the goods. The written statement should contain a description of the goods and the rights that are suspected to have been infringed.

C. Customs' Seizure and Release of Goods

Chinese customs has the right to suspend the release of the goods under two circumstances. First, it may do so pursuant to a pe-

tition of the IPR holder. Second, it may suspend release of the goods pursuant to the IPR recording. IPR holders may apply to a court or IPR authorities to decide an infringement dispute fifteen days from when customs officials seized the goods. (Customs may release the goods if the IPR owners fail to apply to the courts or IPR authorities, respectively.) If the court or IPR authorities decide that an infringement has occurred, customs can confiscate the goods. However, if the court or IPR authorities decide that no infringement has taken place, customs will release the goods.

D. Customs Disposition of Goods of Infringement

Customs will destroy goods that are found to have infringed copyrights. If goods that infringe trademarks do not have removable marks, they will be either destroyed, auctioned, or employed for social welfare.

E. Customs Punishment of Infringement

If the owner of goods intends to infringe a property right, the penalty is a fine up to the value of the goods. If the owner of the goods is involved in customs fraud, likewise the customs penalty is a fine up to the value of the goods. Criminal punishment is also applicable when the owner of the goods has committed a criminal offense.