



# Customs Protection of IPR in China

## USER GUIDE



## Introduction to customs protection of IPR in China

In China, the trade in IPR infringing goods is prohibited, in particular according to Chinese law against the import and export of IPR-infringing goods and the World Trade Organization ([WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS](#)).

Customs enforce IPRs at the border by measures promulgated in the [Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights](#).

Most detentions operated by China customs take place at export. China customs is empowered to stop IPR infringing goods and impose fines on the infringers.

### Recording your IPR with GACC: **please do it!**

In order to seek protection by China customs against counterfeit goods, right holders are encouraged to record their IPRs with the [General Administration of China Customs \(GACC\)](#). The recordation [procedure](#) is cost-free, straightforward and time saving.

This step is highly recommended, not only because of the huge quantity of goods crossing China's borders on a daily basis, making the identification of IPR infringing goods extremely difficult, but also because of the larger spectrum of rights that such a registration grants to the customs authorities regarding controls and confiscation.

The recordation of your IPR with customs serves to notify the GACC of the status of your IPR, providing them with details about whom to contact in case of suspected infringement, and including pictures or samples of the product and its packaging. It will facilitate the detection by customs of the infringing goods, increase the probability of hits by customs, and secure effective and rewarding results for them where they invest lots of effort in the detection of IP infringing goods at the border.

In addition, without prior recordation and in case of interception of infringing goods by customs upon request of the IP owner, customs may detain for a limited period of time but do not have the authority to establish the existence of an infringement. The IP holder will have to file a lawsuit with the court to that end.

The recordation with customs also offers the facility of providing a general guarantee deposit (only applicable for trademark recordation), instead of separate deposits upon each request for detention. It will also impact the amount of the claimed deposit.

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## What IPR can seek customs protection?

Only the following IPRs may be registered with the GACC: trade marks (but no service trade marks), patents (including invention, utility models and design patents) and copyright.

## How to proceed with the registration of my IPR with China Customs?

### Who is entitled to register?

Please note that only right holders or authorised agents located in mainland China can record with the GACC.

### How to record?

Application has to be filed [on-line](#).

### What documents to submit?

- ☑ An e-copy of the identification certificate of the right holder and agent where necessary, (including a Chinese translation);
- ☑ An e-copy of the IP certificate (TM certificate, patent certificate, copyright registration or other document justifying copyright);
- ☑ Information regarding related licences, photos of the goods and their packaging;
- ☑ An e-copy of power of attorney in the name of the agent responsible for the registration process, if one is used.

Please note that although in theory, copyright from any Bern Convention country can be registered, in practice, evidence of copyright is required and the easiest way to prove ownership is through China copyright registration. For more information see [the China IPR SME Helpdesk copyright guide](#).

## On-line recordation step by step

The on-line recordation process can be completed via the [online recordation system](#). In order to assist you, please consult the [User Guide to the “Intellectual Property Right Registration System for Customs Protection” of the GACC](#).

Please also consult the following guidance documents [Guide to Using Customs to Protect your IPR in China](#) and [How to Record Trade Mark with Customs in China](#) by the [China IPR SME Helpdesk](#).

## Modification notifications

It is worth mentioning that any modification in the status of the right holder (his/her representative – agent, attorney, coordinates) or the IPR itself has to be notified as quickly as possible to the GACC, in order to be taken into account. If that requirement has not been fulfilled within 30 days of the notification, there is a risk that the application or the right awarded will be cancelled.

You can find some relevant templates on the following [page](#).

## Duration and cost of IPR registration with GACC

The enforcement offered by the GACC is cost-free, covers the whole duration of the protected IPR, without exceeding a period of 10 years.

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## Detention procedure by China Customs

### Pre-recorded rights

#### Detention

Where China customs identify goods suspected of infringing an IPR that has been pre-recorded, they shall suspend the release of the goods, be it at export or import. The exporter or importer is required to present a written authorisation granted by the right holder that allows him to proceed with this import/export operation.

Should this authorisation not be presented, China customs notify the right holder with information relating to the cargo (name of the consignor/consignee, origin and declared destination of the consignment, quantity). There is an obligation for local Customs house to report potential infringement to the higher regional Customs headquarter. Regional Customs headquarter in turn will officially notify the IPR owner, which may result in some delays.

The right holder has 3 working days upon notification to react and defend his interests by undertaking the following actions:

1. Contact immediately the customs authorities and ask them to send him pictures of the goods to assist the right holder with the identification of their authenticity or not. Although Chinese customs are collaborative in providing assistance, IPR owner has to be prepared in case some difficulties arise, to provide photos personally or via his representatives/investigator.
2. If goods are found to be IPR infringing, an application for official detention of the goods by customs, called “*Written Application of Detention for Counterfeits*” (respectively *Written Application for Release of Genuine Goods* in the opposite case), is required, along with all possible evidence in possession of the right holder.

3. Pay a security deposit with the bank. The purpose of this guarantee is to cover any charges that customs authorities may incur during the detention of goods like warehousing or destruction, but also to cover some undue losses for the consignor should there be a wrongful confiscation. The amount of the deposit is set as follows:

- a. declared value under 20 000 RMB: deposit of 100% of the declared value;
- b. declared value between 20 000 and 200 000 RMB: deposit of 50% of the declared value (with a minimum of 20 000 RMB);
- c. declared value over 200 000 RMB: deposit of 100 000 RMB.

The right holders may lodge a general deposit (Bank Guarantee Letter) in order to avoid a deposit on a case-by-case basis. This has to be renewed each year and should at least amount to 200 000 RMB

#### Investigation

After the completion of this formality, customs officials will proceed with an investigation to establish whether the detained goods infringe an IPR or not (which they are not allowed to do in case of non-recorded IPR, even if they have detained some suspect goods).

Customs can seek assistance of the right holder as well as the other administrations involved in IPR protection, such as State Administration for Industry and Commerce (SAIC). Customs will investigate in order to establish the legitimacy of the goods in question. The importer or exporter is entitled to present any kind of documents and materials in his defence, such as contracts, authorisations, etc.

Customs has a 30 working-day deadline from the date of detention to establish whether goods are infringing or not.

### ***Notification to the right holder***

If the documents/evidence/proof presented are unable to prove the lawful origin of the goods, customs may impose administrative penalties on the importer/exporter and the goods can be:

- destroyed, or
- de-branded and donated to charity, or
- purchased by the right holder, or
- de-branded and auctioned.

The importer/exporter will be fined an amount of approximately 30 % of the declared value of the infringing goods.

If the threshold of the infringing goods meets criminal offence thresholds, the case should be transferred to the Ministry of Public Security (police authority – it should be directed to the local Public Security Bureau).

Should customs not be in a position to identify the consignor within 3 months and deem the goods to be infringing customs may proceed with a final seizure.

Should customs not be in a position to identify whether the goods to be infringing or not, the right holder has 50 days from the date of detention to go before the People's Court in order to take protective measures. If the right holder does not go to the court or if the court rejects the taking of protective measures, goods will be released.

Once customs has notified the right holder of its final decision, they return the security deposit, after deducting expenses.

### ***Detention upon right holder's request***

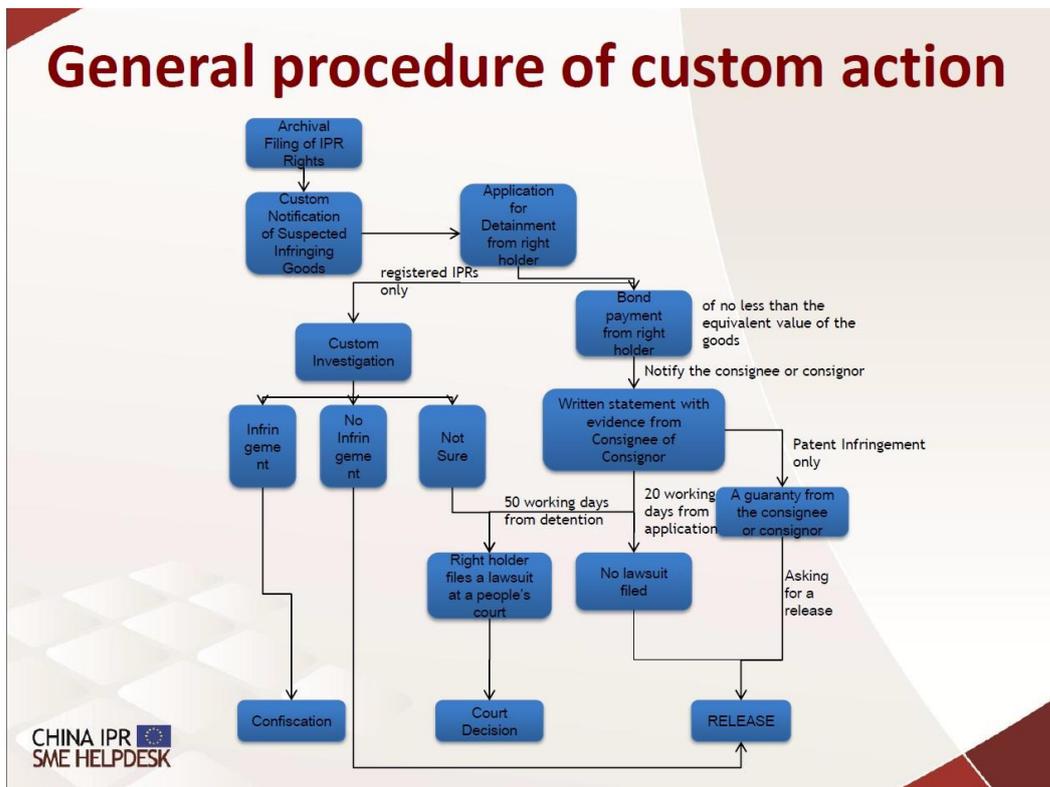
This procedure enables the right holder to apply for detention by customs of suspected infringing goods with no pre-recorded rights. However, it is for the right holder to collect and submit all the proofs needed upon filing the complaint, including information identifying the suspected consignment (e.g. container number).

The request has to be lodged with the customs at the point of entry or exit.

It should be supported by the payment of a security deposit.

If customs deem the provided information to be sufficient, the suspected goods can be detained for up to 20 working days. Customs will notify the right holder of the detention. The right holder needs to immediately refer the case to the People's Court in order to take protective measures. If the Court has not reacted within the 20-day time period, the goods will be released. If protective measures have been taken by the Court, customs shall provide assistance upon a petition from the Court. The Court will make a final decision with no further possibility to appeal against it. If the Court has reacted by rejecting the taking of protective measures, the goods will be released.

It is worth noting that customs might invite the right holder to rapidly proceed with IPR registration to China customs, in order to turn it into the procedure applied for pre-recorded IPR.



Source: [China IPR SME Helpdesk](#)

## Criminal Procedure

China customs is not empowered to proceed with criminal investigation.

If the case meets the criminal offence thresholds, the case will be submitted to China police (Ministry of Public Security – MPS – or local Public Security Bureau - PSB) . The infringer is not fined by customs but will get penalties further to the Court decision.

Once China police agree to handle the case, customs will proceed with the formal transfer, in particular the physical moving of the goods to the police and all accompanying documents and pieces of evidence (invoice, bill of lading, report, etc.)

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## Tips for a successful collaboration with China Customs

- In order for the customs authorities to make proper and quick decisions when checking goods passing the borders, IPR holders should maintain close contact with the customs authorities. This is particularly important in order to avoid any delays in the delivery of the goods and any financial losses. It is therefore recommended that the IPR holder always keeps an updated list of his/her trustworthy distributors for the purpose of the GACC database.

- It is also very important for the holder to provide customs with names and contacts of several authorized representatives in China, who are able to identify counterfeit goods. Those persons will be contacted by customs officials in case of suspected infringement. Agents or representatives have to be duly authorized and

preferably recorded with customs. The recorded agent is entitled to interact with customs and represent the IPR holder at all levels of communication: notification, intervention seizure, paying deposit, submitting responses or training officials.

- Provide customs with up-to-date information: IPR holders are requested to regularly provide customs with up-to-date description, photos and samples of their products and trademarks as well as training.

- The customs enforcement of IPR should be seen by right holders as a long term and on-going strategy, whose final success depends on the close collaboration with the GACC.



## Frequently asked questions

You can find the answers to the most frequent questions on the website of the helpdesk [China IPR SME Helpdesk](#)

## Contacts

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