Content

Title：	Regulations Governing Customs Measures in Protecting the Rights and Interests of Trademark Ch
Date：	2012.07.09
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Content：	Article 1 The Regulations are enacted pursuant to Paragraph 2 of Article 78 of the Trademark Act (hereinafter called “the Act”). Article 2 “Customs acts upon its own initiative” as specified in Paragraph 1 of Article 75 of the Act refers to any of the following circumstances: 1. The proprietors of a registered trademark lodge a complaint that specific imported or exported goods have infringed on their trademark rights. 2. The proprietors of a registered trademark lodge advice that unspecific imported or exported goods are suspected to have infringed on their trademark rights. 3. Other government agencies inform that imported or exported goods are suspected to have infringed on trademark rights. 4. The Customs authority discovers on its initiative that the imported or exported goods are suspected to have infringed on trademark rights from the appearance of these goods. Article 3 In the event that the proprietor of a registered trademark lodges a complaint that specific imported or exported goods have infringed on his or her trademark, he/she should notify the Directorate General of Customs, Ministry of Finance or the Customs Office at the port of import or export in writing attached with the following information: 1. The fact of infringement and the sufficient description to identify the infringing goods. The proprietor of a registered trademark should also provide related data in electronic file, such as sample, picture, catalogue or photo of the genuine goods and counterfeit goods. 2. Related specific data such as names of the exporter/importer, name of the goods, import/export ports, date, number of flight or ship, number of container, storage venue of the goods. 3. Registered trademark certificate. In the event that the aforementioned documents are submitted by the proxy of the right owner, an additional proof of proxy must be included as well. Article 4 When the Customs authority receives the complaint specified in the preceding Article, the Customs authority shall scrutinize and decide whether the contents of the complaint are substantive. Once accepting the

complaint, the Customs authority should notify the proprietor of a registered trademark. In the event that the Customs authority rejects the complaint, the Customs authority shall notify the proprietor of a registered trademark and explain the rationales of rejection. When necessary, the Customs authority may notify the proprietor of a registered trademark to come on site and provide explanation.

Article 5
When the Customs authority accepts the complaint in accordance with the preceding Article and discovers the exported/imported goods are consistent with the contents of the complaint, the Customs authority shall notify the proprietor of a registered trademark and exporter/importer by phone or facsimile.
The proprietor of a registered trademark and exporter/importer should follow the procedures as below after receiving the aforementioned notification:
1. The proprietor of a registered trademark shall identify on-site the items in question within four (4) hours for export by air freight, and within twenty-four (24) hours for import/export by sea freight and import by air freight, and then submit evidence of infringement within three (3) business days. Anyone failing to provide such evidence in time should apply in writing with a legitimate reason for an extension of additional three (3) business days prior to the deadline. Application for extension is acceptable only once.
2. The importer/exporter should submit documents of authorization or evidence of non-infringement within three (3) business days. Anyone failing to provide such evidence in time should apply in writing with a legitimate reason for additional three (3) business days prior to the deadline. Application for extension is acceptable only once.

Article 6
The following procedures shall apply when the proprietor of a registered trademark, in accordance with the preceding Article, has identified the goods in question that have indeed infringed on his/her trademark and has submitted evidence of infringement:
1. When the importer/exporter fails to submit authorization document or evidence of non-infringement prior to the deadline stated in Subparagraph 2 of Paragraph 2 of the preceding Article, the Customs authority may, in accordance with Article 95 or Article 97 of the Act, transfer the entire case to judicial offices for further investigation.
2. When the importer/exporter submits authorization document or documentation of non-infringement prior to the deadline stated in Subparagraph 2 of Paragraph 2 of the preceding Article, the Customs authority shall notify the proprietor of a registered trademark that he/she may, in accordance with Paragraph 1 of Article 72 of the Act, apply to the Customs authority for the detention of the goods in question within three (3) business days following the date of notification.
In the event that the proprietor of a registered trademark does not apply for detention to the Customs authority in accordance with Subparagraph 2 of the preceding Paragraph, the Customs authority may follow relative

regulations on export/import clearance procedures after taking representative samples, provided that no other relevant regulations are violated.

Article 7
In the event that the proprietor of a registered trademark does not appear to identify the goods in question in accordance with Article 5, or does not provide evidence of infringement prior to the deadline, or the items in question after identification do not infringe their trademark, the Customs authority shall follow relative regulations on export/import clearance procedures, provided that no other relevant regulations are violated.

Article 8
While lodging advice that unspecific imported or exported goods are suspected to have infringed on his/her trademark rights, the proprietor of a registered trademark shall make it to the Directorate General of Customs, Ministry of Finance or the Customs Office at the port of the export/import in writing attached the data set out in Subparagraph 1 and Subparagraph 3 of Article 3.
When Customs authority accepts the advice as prescribed in the preceding Paragraph and performs the protection measures, regulations set out in Article 4~7 shall apply mutatis mutandis.
The Customs authority shall perform protection measures for the advice as prescribed in the preceding Paragraph for one year starting from the date of acceptance of advice. The proprietor of a registered trademark may update the data and apply for extension of one year prior to the expiration date. Those who do not apply for extension shall lodge new advice to the Customs.

Article 9
When the Customs authority receives a report from other government agencies that imported/exported goods are suspected of infringing on trademark rights, or discovers on its initiative that the imported/exported goods are obviously infringing on trademark rights, regulations on performing protection measures set out in Article 5~7 shall apply mutatis mutandis.
When the Customs authority performs protection measures set out in preceding Paragraph and fails to obtain the contact information of the proprietor of a registered trademark, the Customs authority may seek assistance from the Intellectual Property Office, Ministry of Economic Affairs via facsimile.
In the event that the Customs authority fails to obtain the contact information of the proprietor of a registered trademark within one (1) business day after reaching out to the Intellectual Property Office, Ministry of Economic Affairs and cannot find other evidence of violating Customs regulation, the Customs authority shall follow relative regulations on export/import clearance procedures after taking representative samples, provided that no other relevant regulations are violated.

Article 10
Application for inspection of the detained goods in accordance with

Paragraph 1 of Article 76 of the Act shall be made in writing to the Customs Office at the port of import/export. The aforementioned inspection shall be done within the time, venue and method prescribed by the Customs authority. The Customs authority shall be cautious without prejudice to the protection of confidential information of the detained goods when making the above prescription.

Article 11
While applying for relevant information in accordance with Paragraph 2 of Article 76 of the Act, the proprietor of a registered trademark shall provide an application form and attach the following documents to the Customs Office at the port of import/export:
1. Registered trademark certificate;
2. Evidence of infringement;
3. An affidavit of the proprietor of registered trademark stating that the information received from the Customs authority will be used solely for the purposes of the investigation of the case and the initiation of litigation.
In the event that the aforementioned documents are submitted by the proxy of the right owner, an additional proof of proxy must be included as well.
After the Customs authority reviews and approves the application of Paragraph 1, the Customs authority may provide in written form the names and addresses of the importer/exporter, consignee/consignor, and the quantity of the items in question.

Article 12
The proprietor of a registered trademark may apply to the Customs authority for taking samples of suspected infringing goods in accordance with Paragraph 1 of Article 77 of the Act only when he/she states that there is a difficulty in identifying the goods in question on the spot and it needs equipment to identify, or when there is a special reason approved by the Customs.
The aforementioned application must be done with an application form, security deposit, and the following documents to the Customs Office where the goods were imported/exported:
1. Registered trademark certificate;
2. The ID of the borrower and the authorization document;
3. An affidavit of the proprietor of registered trademark stating that the samples borrowed will not damage the interest of the exporter/importer and use the samples for illegal purposes.
In the event that the aforementioned documents are submitted by the proxy of the right owner, an additional proof of proxy must be included as well.
The Customs authority may take two pieces of sample of goods from the same model and specification. Pictures must be taken for one piece before the applicant borrows it, and the Customs authority keeps the other piece.

Article 13
These Regulations shall take effect upon the date of promulgation.

Data Source：Ministry of Finance, R.O.C. Laws and Regulations Retrieving System