

### **Customs Enforcement: Finding your Way**

#### **Can I protect my IP at the border in China?**

Counterfeit products have many ports and borders through which they can flow, and techniques for disguising illegal shipments have become highly sophisticated. While there is no easy formula which guarantees 100% protection, companies can take legal and practical measures to reduce risk and avoid possible loss.

Because it is hard for an IP right holder to identify a particular container, or to know when a suspect shipment is about to enter or leave China, right holders usually rely on Customs to protect their IP at the border.

#### **What steps can be taken to protect my IP at the border?**

You should register your IP rights with the General Administration of Customs in China (GAC), which has the power to temporarily suspend the release of suspect goods for a period of three working days and notify the rights owner of the detention. If the rights are not registered with GAC the port customs will not take action. An online application form is available from the GAC website (<http://english.customs.gov.cn/publish/portal191/>).

GAC decides either to grant or refuse registration of IP rights within 30 working days on receipt of an application. Registration can take up to a period of two months and is valid for 10 years and may be renewed for a further 10 years.

In theory, right holders can apply directly to GAC for detention of a suspect shipment without prior IP registration. In practice, this would require extensive and costly investigative programmes, including the close surveillance and tracking of container vehicles in order to gain sufficient information to uncover a specific container.

## **Do I have to pay a bond to Chinese Customs?**

Yes. The most burdensome aspect of customs enforcement from the point of view of the rights holder is the requirement to submit a security bond payment to the relevant port customs where the goods have been temporarily seized.

It is very important that the right holder has a **procedure in place for its designated agents or local business unit to handle payment of bonds** as soon as a positive verification has been made by Customs.

## **What other practical steps can be taken for border enforcement?**

Effective use of the customs system requires the right holder to have a system already in place to respond to detention notices issued by Customs within three working days. A high proportion of right holders fail entirely to respond to seizure notices which are faxed (in Chinese) to the right holder (or designated agent). GAC is currently considering striking off registration of those right holders who consistently fail to provide a timely response to notices.

It is recommended that where Customs notifies registered right holders of suspect shipments – even be it for a relatively small monetary value, right holders adopt a zero tolerance attitude and respond to every notification with a request for seizure and bond payment where it is clear they can verify the goods are infringing.

IP right holders should have a special budget in place and be prepared to invest and develop a strategy to coordinate their brand protection. An initial investment from the outset can provide cost savings in the long run by prohibiting infringing or counterfeit goods before they are exported from China.