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CHINA LEGAL BRIEFING 50

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1. *National*

State Council Adopted Proposed Amendments to Law on Foreign Trade and Regulation on Customs Protection of Intellectual Property

On 26 November 2003, Standing Committee of State Council adopted in principle draft amendments to Law on Foreign Trade (“对外贸易法”), which will be forwarded after necessary further revision to National People’s Congress for debate. The existent Law was adopted in 1994, which calls for update to keep pace with the developments since its adoption, especially the accession to WTO.

At the same session, amendments to Regulation on Customs Protection of Intellectual Property (“知识产权海关保护条例”) was also adopted. The revised regulation will be released after further perfection. The existent Regulation was promulgated in 1995, the revision of which this time is to bring it in line with relevant WTO agreements. (www.people.com.cn)

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State Council Regulation on Import and Export Duties

On 23 November 2003, State Council promulgated Regulation on Import and Export Duties (“进出口关税条例”), which will take effect as of 1 January 2003. Compared with its 1992 version, the new regulation consummates the provisions relating to customs valuation. It prescribes the circumstances under which the transaction value of the imports will be recognized. It also clarifies which items should be taken into consideration in calculating transaction value and which should not. Moreover, it lays down rules for tax payer's options of valuation methods. (www.law-star.com)

Supreme Court Draft Judicial Interpretation on Construction Project Disputes

Recently, Supreme People's Court published draft Interpretation of Certain Issues Regarding Rules Applied to Adjudication of Construction Project Disputes (“关于审理建设工程施工合同纠纷案件适用法律若干问题的解释”) for comments. Under the draft judicial interpretation, the construction contract will be void where the contractor itself has no qualification to engage in construction project, even if the contract is concluded between the developer and a party holding such qualification on the behalf of the actual contractor, or where public bidding required by law is not held, or where the contractor has not obtained government consents in respect of land used for construction and project plan. (www.court.gov.cn)

MOC et al Opinions on Promotion of Foreign Trade By Means of Science and Technology

On 12 November 2003, State Council released Opinions on Further Promotion of Foreign Trade By Means of Science and Technology (“关于进一步实施科技兴贸战略的若干意见”) prepared by Ministry of Commerce and 7 other departments of State Council, setting out policy objectives in this ambit, which will be implemented by relevant organs through enacting detailed rules.

The emphasis of the Opinions is placed on financial supports. The suggested policies include increasing the financial support from central foreign trade development fund, establishing venture investment schemes at export base of high technology products, reducing the cost of financing for export enterprises by applying preferential interest rate to export credit, developing short-term export credit insurance, adopting a flexible premium rate of export credit insurance for high technology products, encouraging development of Buyer's credit, extending more support in terms of fund to research and development activities of export enterprises.

The Opinions also gives two suggestions in respect of customs clearance and quarantine. Firstly, Expeditious customs procedure should be applied to high-tech enterprises with good reputation and high volume of exportation. Moreover, priority should be given to enterprises incorporated in central and western areas. Secondly, good-reputed high-tech export enterprises with multitudinous and frequent exportation should be exempted

from quarantine or offered simplified procedure. (www.mofcom.gov.cn)

SAIC Opinions on Credit History of Enterprises

On 31 October 2003, State Administration of Industry and Commerce came out with Opinion on Categorized Supervision of Enterprises on the Basis of Credit History (“关于对企业实行信用分类监管的意见”). According to the Opinion, the overall credit history of enterprises will be assessed on the basis a series of parameters selected respectively from market entry, business operation, and market exit. There are 4 possible ranks for an enterprise after the assessment has been made, namely, creditworthy, vigilant, undesirable credit, extremely undesirable credit. Based upon different credit rank, the administrations of industry and commerce will adopt different standards of supervision. Furthermore, the credit history of an enterprise will be made available to the public. (www.saic.gov.cn)

MII to Promulgate Provisions on Electronic Products Pollution

It is reported that Ministry of Information Industry is expected to promulgate Provisions on Administration of Prevention of Electronic Products Production Pollution (“电子信息产品生产污染防治管理办法”) by the end of this year. The Provisions under consideration will set mandatory standards for the lives of electronic products. Products beyond their lives will be reclaimed and forbidden to re-put in market. According to the draft, producers will be imposed responsibility in relation to reclaim and recycle of the electronic products. The Provisions hopes to pave the way for entry of EU market by disallowing application of certain noxious substances to electronic products. (www.law-star.com)

MOJ Provisions on HK & Macao Residents Participating Judicial Exam

On 27 November 2003, Ministry of Justice adopted Provisions on Participation in National Judicial Examination by Residents of HK SAR and Macao SAR

(“香港特别行政区和澳门特别行政区居民参加国家司法考试若干规定”), which will take effect as of 1 January 2004. According to the Provisions, same terms and conditions will be applied to residents of HK and Macao applying for participation in National Judicial Examination. They may apply and take the exam at HK or Macao. Alternatively, they do so in the mainland if they are working, studying or living there. In applying for the

exam, certificates obtained from institutions outside mainland shall be verified by the department of State Council in charge of education administration. The applicants passing the exam may apply for practice in the mainland in accordance with Law on Lawyers, the two CEPAs and regulations of Ministry of Justice. (www.law-lib.com)

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