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1. *National*

Provisions on the Seizure, Attachment and Freezing of Property by People's Courts (Consultation Paper)

关于人民法院查封、扣押、冻结财产若干问题的规定

(征求意见稿)

【*Issued By*】 Supreme People's Court

【*Subject*】 Enforcement Measures

【*Closing Date*】 June 20th 2004

【*Source*】 www.law-lib.com

The draft judicial interpretation deals with various aspects of seizure, attachment and freezing of property ("Measures"). It sets out the criteria for ascertaining ownership of property (Article 2), prescribes the list of properties free from Measures (Article 5), elaborates means of conducting Measures in different scenarios (Article 7-14), and clarifies the effects of the Measures (Article 18-26).

Decision and Identification of Ownership. The decision to seize, attach or freeze property shall be made by court order. Unless both the respondent and the third person possessing the movables (or to whom the immovables are

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attributed by registration) agree otherwise, the ownership of movables not subject to registration is presumed by possession, while the ownership of immovables and movables subject to registration is ascertained by registration.

Approaches for Movables and Immovables. The movables against which the Measures are taken shall be placed under the possession of the courts issuing such orders. As for immovables and movables subject to registration, the Measures shall be implemented by ordering the relevant registrars to book such Measures and ordering the respondent to submit certificates of property to the courts. In the latter case, official seals or announcements of the Measures unaccompanied by proper input of registration may not prevail over the orders of the Measures issued by other courts.

Standby Measures. Standby Measures may be conducted against the property against which the Measures have already been conducted. Under this circumstance, the subsequent Measures will be automatically effective when the property is released from earlier Measures.

Term of Measures. The duration of the term of Measures against movables is up to one year. In the case of immovables and other proprietary rights, the term is up to 2 years.

Policies for the Development of the Auto Industry

汽车产业发展政策

【Issued By】 State Development and Reform Commission

【Subject】 Auto Industry

【Promulgated on】 May 21st 2004

【Effective From】 May 21st 2004

【Repeal】 Industrial Policies for Auto Industry 1994

【Source】 www.sdpc.gov.cn

The new Policy is enacted to implement commitments under the WTO agreements and respond to new developments in the auto industry since the promulgation of the first version. It consists of 13 chapters : policy objectives, development plans, technology policies, structure adjustment, access administration, trademark and brand, product development, spare parts and relevant industries, sales network, investment administration, importation administration, auto consumption, and miscellaneous matters.

Compared to the first version, the new Policy has several features. Firstly, it removes the requirements contrary to the WTO rules including the foreign exchange balance, localization, and export performances. Secondly, it reduces matters subject to administrative approval. Thirdly, it puts forward brand strategy and encourages the

development of products with their own IP rights.

As to investment administration, the approval (“批准”) procedure is replaced by acknowledgement (“核准”) and record (“备案”). The projects subject to acknowledgement include: (1) expansion of production within the same category of products without establishing new legal persons by existent enterprises producing autos, transport vehicles for agricultural purposes or vehicle engines; (2) investment in production of motorcycles and engines thereof; (3) investment in spare parts of autos, transport vehicles for agricultural purposes or motor vehicles.

Measures Implementing the Regulation on Customs Protection of Intellectual Property Rights

中华人民共和国海关关于《中华人民共和国知识产权海关保护条例》的实施办法

【Issued By】 Customs General Administration

【Subject】 IP

【Promulgated on】 May 25th 2004

【Effective From】 July 1st 2004

【Source】 www.customs.gov.cn

The Measures are adopted to implement its parent regulation adopted on 26th November 2003 (CLB No.50). It is composed of the following parts: general provisions, record of intellectual property rights, seizure by application, investigation initiated by authorities, disposal of goods and charges, final clauses.

Applications for the record of IP rights or for protective measures should be made by the right holders or through domestic IP agents in case of domestic right holders, and by domestic representative institutions or through domestic IP agents in case of overseas right holders.

The shippers and consignees shall be aware of IP rights in the exports and imports insofar as it is reasonable. Proof shall be presented when declaration of IP rights in exports and imports is made. In doing so, a written statement shall be submitted notifying that the proof contains commercial confidential information, if any.

The record of IP rights with the custom authorities is valid for 10 years or the remaining validity period of the IP rights to be recorded, whichever is longer.

Right holders seeking to seize suspicious imports or exports shall file applications with the customs and present proof in case of non-recorded IP rights. Full value guarantee shall be provided. In the event that right holders are notified by the customs that certain imports or exports are suspicious of infringement, they may choose to apply for seizure and provide proportional guarantee.

Circular on Reinforcing and Improving the Importation Administration of Audio and Video Products

文化部关于加强和改进音像制品进口管理的通知

【Issued By】 Ministry of Culture

【Subject】 Parallel Importation

【Promulgated on】 May 25th 2004

【Effective From】 May 25th 2004

【Source】 www.cnnt.gov.cn

The Circular first reiterates that Sino-foreign (including HK, Macao and Taiwan) co-filmed movies and TV series shall not be published in the mainland China unless the importation procedures have been followed. The practice of bypassing importation control in the name of co-production is strictly forbidden.

The essence of the Circular is to stop parallel importation. It provides that parallel importation between trades in copyright and between trade in copyright and products is forbidden. Audio and video products without exclusive licencing rights are forbidden to be imported. It further provides that exporters shall not export the same products to different importers, even if the media or format of such products is different. It then sets out elaborate rules for importation of products already published in China, the treatment of gifts accompanying importing products, and the importation of albums containing "new plus selective old ones".

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