



CHINA LEGAL BRIEFING 129

W E N G E R & V I E L I B E I J I N G O F F I C E

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1. National

Circular Regarding the Filing and Approval Procedures with Relation to Duty Reduction and Exemption

关于加强减免税审批管理的公告

【Issued By】 General Administration of Customs

【Subject】 Customs

【Promulgated on】 August 30th 2005

【Effective from】 October 1st 2005

【Source】 <http://www.tid.gov.hk/>

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TRANSACTIONS (MERGERS AND ACQUISITIONS, PRIVATE EQUITY AND CAPITAL MARKETS)

LITIGATION/ARBITRATION

COMPETITION LAW AND INTELLECTUAL PROPERTY LAW

TAX

The General Administration of Customs issued a notice on August 30, 2005, setting out the filing and approval procedures of duty reduction and exemption. Therein the unit which enjoying the preferential policies of import duty (hereinafter "Importing Unit") shall apply for the Customs to handle the Duty Reduction and Exemption procedures regarding the importing goods in accordance with the applicable rules on the preferential policies of importing duty and the relevant regulations on the management of the project and the importing goods. In advance, the unit shall finish all the procedures of examination, approval, filing and registration in the relevant state or local authorities.

Where the registration and filing with the Customs necessary, the Importing Unit shall, prior to the importing of the first batch of goods, apply for the Customs in charge to handle the registration and filing procedures with the relevant documents and certificates. Thereafter, the Importing Unit shall, prior to the importing of every batch of goods, apply for the Customs in charge to handle the Duty Reduction and Exemption approval procedures with connection to the importing goods.

After the examination, the Custom shall accept the application where the conditions for filing and registration of the Duty Reduction and Exemption are fulfilled. In the event that the Customs does not accept the application, the Customs shall explain the reason(s) to the applicant.

The Importing Unit or its agent shall apply to the Customs where the goods imported to finish the Duty Reduction and Exemption procedures with the "Certificate of Duty Exemption" and other documents regarding customs declaration.

Where all the applications with relating to Duty Reduction and Exemption procedures have been submitted to the Customs and the goods arrived at the importing port within the accepting period of the Customs in charge, the Importing Unit may apply for the Customs to handle the Good Examination and Release procedure based on the Taxation Guarantee.

The Customs shall collect the duty on the goods when applying for customs where the Importing Unit does not apply to handle the above-mentioned procedures (filing and approval procedures for Duty Reduction and Exemption or Taxation Guarantee procedure).

Regulations on the Implementation of the Law on Import and Export Commodity

Inspection of the People's Republic of China

进出口商品检验法实施条例

【Issued by】 State Council

【Subject】 Foreign trade

【Promulgated on】 August 31st 2005

【Effective from】 December 1st 2005

【Source】 <http://www.tid.gov.hk/>

The Implementation Regulation vests the power of administering Import & Export commodity inspection to General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). AQSIQ shall promulgate the catalogue of commodities of which the import and export shall be subject to compulsory inspection ("Catalogue"). Commodities not listed in Catalogue are subject to sampling inspection.

Local branches of AQSIQ will be responsible for conducting inspection in their respective areas. The import & export inspection of drugs, measuring instruments, boilers and pressure containers, vessels, containers, planes and nuclear pressure equipment shall be inspected by institutes stipulated by other laws and regulations.

Import commodities falling in Catalogue must pass import inspection before they are sold or used. Commodities failing to pass the inspection are not allowed to be sold or used, unless they successfully pass the re-inspection after treated under the supervision of AQSIQ local branch. Import commodities not subject to compulsory inspection are not allowed to be sold or used if they fail to pass the sampling inspection, unless they successfully pass the re-inspection as described above. Similar regulations regarding export commodity inspection are applied.

Manufacturers to import food must apply for hygiene registration with AQSIQ, manufacturers to export food must apply for hygiene registration with AQSIQ local branch. Manufacturers to import or export cosmetics are also subject to hygiene registration administration. The Implementation Regulation also stipulates legal responsibilities for breaching the Regulation.

Regulations on Direct Selling

直销管理条例

【Issued by】 State Council

【Subject】 Trade, Direct Selling

【Promulgated on】 September 1st 2005

【Effective from】 December 1st 2005

【Source】 <http://www.tid.gov.hk/>

Enterprises to undertake direct selling in PRC are subject to the approval of Ministry of Commerce (MOF). To be approved as a Direct Selling Enterprise (DSE), the following conditions must be satisfied:

- The investor has a good reputation, without substantial illegal business record for the last 5 consecutive years. For foreign investors, a minimum of 3 years' overseas direct selling experience is also required.
- The actual paid registered capital must not be below RMB 80,000,000.
- Sufficient guarantee deposit has been paid to a designated bank.
- A system of information report & registration and release has been set up.

The DSE must set up a branch in the province or other administrative district of the same level where it intends to conduct direct selling activities. MOF will publish and update from time to time the name list of DSE and their branches on its official website.

No unit or individual other than DSEs or their branches is allowed to employ Direct Salesman (DSM). Neither DSE nor its branch may release advertisements on the remuneration of DSM, nor may they set it as a precondition of the employment of DSM that the DSM shall subscribe any fee or buy any commodity.

DSE may not employ the following personnel as DSM:

- any person below 18 years;
- any person without civil capacity or with limited civil capacity;
- full-time student;
- teacher, medical personnel, civil servant or soldier in active service;
- employees in labor relation with DSE;
- foreigners or any person living abroad;
- any person forbidden by laws or regulations to undertake a part-time job.

DSE shall enter into a marketing contract with its DSMs, and make sure the DSMs conduct direct sales activities only in the area in which a service institute has been set up for the provincial administrative district of the branch. DSE shall train its DSM candidates and conduct testing of them. DSE shall confer certificate of DSM to the candidates passing the test. No one without the certificate of DSM may conduct direct selling activities.

DSM must sell to consumers at the price indicated on the product. DSE must pay to DSM remuneration at least once per month. The remuneration shall only be based on the sales income out of the DSM's direct involvement in the sales, and shall not exceed 30% of the above sales income.

The burden of proof lies with the former in disputes of replacement or rejection of the product between DSE and DSM or between DSE & its DES and consumers. DSE is jointly and severally liable for the direct selling behaviors of its DSM, except for those proven to be unrelated to the DSE.

DSE shall open a special account with a bank jointly appointed by MOF and State AIC, and pay sufficient guarantee deposit. The deposit for the establishment of DSE is RMB20,000,000; after DSE starts operation, the deposit shall be adjusted monthly so that it equals 15% of the sales income of the directly sold products of the DSE for the previous month, provided a maximum limit of RMB100,000,000 and a minimum limit of RMB20,000,000 are applied.

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