



## CHINA LEGAL BRIEFING 130

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### 1. National

#### Notice Concerning the Implementation of the "Development Policy for Motor Vehicle Industry"

有关落实《汽车产业发展政策》的公告

**【Issued By】** General Administration of Customs, State Development and Reform Commission, Ministry of Commerce

**【Subject】** Motor Vehicle Industries

**【Promulgated on】** September 14<sup>th</sup> 2005

**【Effective from】** September 14<sup>th</sup> 2005

**【Source】** <http://www.tid.gov.hk/>

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- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

The General Administration of Customs, the State Development and Reform Commission and the Ministry of Commerce jointly issued a notice concerning the implementation of the "Development Policy for Motor Vehicle Industry" on September 14, 2005. The notice addresses certain implementation issues regarding the administration on import of motor vehicles.

First, the Appointed Importing Port Management shall be applied to the motor vehicles with the taxation number of No. 8701 to 8706, 8716 and 8429 according to "Customs Import and Export Tariff of the People's Republic of China" excepting those vehicles with the Taxation Number of 87011000, 87013000, 87019011, 87019019, 87019090, 87031000 and 87041030. While the components and critical parts of the motor vehicles shall not be subject to the Appointed Importing Port Management.

Second, regarding the motor vehicles under the Appointed Importing Port Management, the Customers will issue the "Certificate of Goods Importing" for each vehicle (excluding the trailer, semitrailer and self-running machinery vehicle with tires) when importing, the data of "Certificate of Goods Importing" is electronically connected with database of the Ministry of Public Security.

Regarding the motor vehicles which transferred to the Bonded Areas before September 30, 2005 with the purpose to entering into the domestic market, the operator may apply for the Customs based on the Storage List and original Contract to handle the registration and filing, and the Customs shall stamp the Form of Registration and Filing after examination. The operator qualified for operating the car business, shall apply for the Ministry of Commerce to obtain the "Approval Certificate for Automatically Importing" based on the Form of Registration and Filing in accordance with the current applicable procedures.

The importing motor vehicles which transferred to the Bonded Areas before Dec. 31, 2004 shall apply for the Customs to handle the procedures of applying to customs and taxation before Dec. 31, 2005. And those motor vehicles which transferred to the Bonded Areas during the period of January 1, 2005 to September 30, 2005 shall apply for the Customs to handle the procedures of applying to customs and taxation before October 31, 2005.

In the event the motor vehicles stored in the Bonded Area for the purpose of entering into the domestic market cannot handle the procedures of importing and applying to customs in accordance with the time limit stipulated above shall be returned abroad.

**Regulations on banning of pyramid sells**

禁止传销条例

**【 Issued by 】** State Council

**【 Subject 】** Trade

**【 Promulgated on 】** August 28<sup>th</sup> 2005

**【 Effective from 】** November 1<sup>st</sup> 2005

**【 Source 】** <http://www.tid.gov.hk/>

The State Council of the People's Republic of China has promulgated the "Regulations on Banning of Pyramid Sales" (hereinafter referred to as the "Regulation"), which will take effect from November 1, 2005. The Regulations list out in detail the types of pyramid selling activities, arrangements and procedures for imposing penalties, legal responsibilities of parties involved in pyramid selling, etc.

The term "pyramid sales" as mentioned in the Regulation refers to such an act by which an organizer or operator seeks for unlawful interests, disturbs the economic order and affects the social stability by recruiting persons, calculating and paying remunerations to recruiters on the basis of the number of persons a recruiter has directly or indirectly recruited or the sales performance, or asking the recruiters to pay a certain fee for obtaining the qualification for participation. Article 7 further stipulates three kinds of pyramid sales which are strictly prohibited by the Regulation.

The industrial and commercial administration department and the public security organ shall, under the Regulation, investigate and handle the pyramid sales within their respective functions. In addition, the commercial, educational, civil affairs, public finance, labor security, telecommunication and taxation administrative departments or entities shall, according to their respective functions and the relevant laws and administrative regulations, cooperate with the industrial and commercial administrative department and the public security organ in investigating and handling the pyramid sales cases.

As the investigation and handling measures and procedures, the Regulations stipulates that the industrial and commercial administration department has the right to take the measures such as ordering the violator to stop the pertinent activities, investigating against the related organizer, operator or individuals, carrying the on-the-spot inspection, copying or seizing the relevant contracts and accounting books, etc, sealing up the business places suspected of being involved in pyramid sales, and applying to the judicial organ for freezing if there is evidence showing that the unlawful funds are transferred or hidden, etc.

With regards to the legal liabilities, the Regulations provides that in case an individual commits any act as prescribed in Article 7 of the Regulation and organizes and plans any pyramid sales, the industrial and commercial administrative department shall confiscate his illegal properties and gains and impose upon him a fine of RMB 500,000 up to RMB 2 million, and he shall be subject to criminal liabilities if a crime is constituted. In case an individual commits any act as prescribed in Article 7 of this Regulation and introduces, induces or coerces any other person to participate in pyramid sales, the industrial and commercial administrative department shall order him to stop the illegal act, confiscate his unlawful properties and gains and impose upon him a fine of RMB100,000 up to RMB 500,000; and he shall be subject to criminal liabilities if a crime is constituted. In case an individual commits any act as prescribed in Article 7 of this Regulation and participates in pyramid sales, the industrial and commercial administrative department shall order him to stop the illegal act and impose a fine of less than RMB 2,000.

In addition, the Regulations also specifies the respective legal liabilities for other illegal behaviors related to pyramid sales, such as legal liability for providing business or training places, goods, keeping and storing sites for pyramid sales, and for any party involved illegally puts to use, exchanges, transfers or destroys the properties sealed up or seized, etc.

### **Detailed Rules For the Implementation of Bidding for Quantity of Export License of Textiles**

纺织品出口许可数量招标实施细则

**【 Issued by 】** Ministry of Commerce

**【 Subject 】** Foreign Trade

**【 Promulgated on 】** September 16<sup>th</sup> 2005

**【 Effective from 】** September 16<sup>th</sup> 2005

**【 Source 】** <http://www.english.mofcom.gov.cn/>

For the purposes of perfect the management of export of textiles, Ministry of Commerce will make public bidding for some quantity of export license of textiles in 2006 with the approval of the State Council. In order to play a supporting rule to the management of public bidding, Ministry of Commerce has worked out Detailed Rules For the Implementation of Bidding for Quantity of Export License of Textiles in accordance with Measures on Bidding for Quota of Export Commodities ( Decree No.11 2001 of former MOFTEC).

The ministry of commerce is going to establish a bidding committee that will be in charge of making and publishing detailed provisions for the proceeding of public bidding and that will supervise the adherence of these rules. The bidding itself will be conducted by the bidding office run by the MOFCOM. This office shall create bidding plans outlining the categories and quantities of export of textiles, control the qualification of bidders and validity of bids as well as conduct the proceeding of bidding itself.

Interested enterprises that have export qualifications may participate in public bidding. Lower regional departments of the MOFCOM will check the qualification of bidders in a preliminary round and ensure that only valid bids can take part in the examination round held by the bidding office. Participants have to submit a bid for a certain project outlining the category, the quantity and price they are willing to pay. In order to conduct well regulated proceedings the bidding committee may stipulate the lowest tender quality for certain categories as well as the lowest price. A bid has to be submitted with an electronic bid sheet issued by the bidding committee. Every enterprise can only bid once for every project within a fixed time limit.

The bidding committee shall publish the results of public bidding. The winners are allowed to transfer export quantity to third parties.

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