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# CHINA LEGAL BRIEFING\* 150

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## **Measures of the Customs of the People's Republic of China on Computer Networked Surveillance and Administration of Processing Trade Enterprises (Order No. 150 of China Customs)**

中华人民共和国海关加工贸易企业联网监管办法(海关总署第150号)

**Issued By**            **China Customs**  
**Subject**              **Customs**  
**Promulgated on**    **June 14<sup>th</sup> 2006**  
**Effective from**     **August 1<sup>st</sup> 2006**  
**Source**                **[www.customs.gov.cn](http://www.customs.gov.cn)**

The Measures of the Customs of the People's Republic of China on Computer Networked Surveillance and Administration of Processing Trade Enterprises (the "Measures") have been promulgated in order to strengthen the surveillance and administration of processing trade enterprises by the Chinese customs authorities ("Customs"). The computer networked surveillance and administration performed by Customs means that the processing trade enterprises shall report necessary data such as information on material flow, production and distribution to the Customs via data exchange platforms or other computer networked methods. This allows the Customs to perform the checking and calculating of such data. However, the Measures do not apply to the processing trade enterprises within the special surveillance and administration region or tax-protected premises of the Customs.

The processing trade enterprises applying for such computer networked surveillance and administration should satisfy the following requirements. Firstly, they should have the qualifications for processing trade. Secondly, they have to register with the Customs. Thirdly, they should be production enterprises. The Customs shall establish electric accounts for each enterprise. An electric account is a database that shall be used to record all electric data regarding import and export and relevant information required by the Customs. The Customs can therefore perform the checking and examination of the processing trade enterprises based on the database. Taxes and tariffs can be calculated and collected in line with the electric data.

Deposit or pledge from bank shall be provided by the enterprises as per the Custom's requirement where the following situations occur. Firstly, where the data is not reported correctly to the Customs. Secondly, where the relevant data, accounts and documents are not prepared for performing checking and examination by the Customs. Thirdly, where the relevant procedures are not accomplished in time. Finally, where the accounts are not

established in line with the requirements of the Customs or the data or the accounts are illegible.

## **Circular Regarding Relevant Problems on Establishing Foreign Invested Advertising Enterprises by Foreign Investors via Shares Merger and Acquisition (No. 99 [2006])**

关于外国投资者通过股权并购举办外商投资广告企业有关问题的通知  
(工商广字[2006]99号)

**Issued By** State Administration of Industry and Commerce and Ministry of Commerce  
**Subject** Advertising  
**Promulgated on** April 11<sup>th</sup> 2006  
**Effective from** April 11<sup>th</sup> 2006  
**Source** <http://ggs.saic.gov.cn>

Foreign investors may establish Sino-foreign equity joint ventures via partial share transfer from Chinese advertising enterprises to foreign investors. They may also establish wholly foreign funded advertising enterprises via transfer of the entire shares of such enterprises, in line with the Provisions on the Administration of Foreign-funded Advertising Enterprises (2004) and the Interim Provisions for Foreign Investors to Merge Domestic Enterprises (2003).

Applicants should file the following documents to the State Administration of Industry and Commerce (“SAIC”) or authorized provincial branches by the SAIC: Firstly, the application for shares merger and acquisition that must be jointly signed by the Chinese domestic advertising enterprise to be merged or acquired and the foreign investor. Secondly, the decisions made by the General Shareholders’ Meeting and/or Board of Directors of the Chinese domestic advertising enterprise to be merged or acquired, the decisions made by the General Shareholders’ Meeting and/or Board of Directors of the foreign investor; the registration certificate of the Chinese domestic advertising enterprise; the registration certificate of the foreign investor; the credit certificates of the foreign investor; the examination opinions of the local administration of industry and commerce must all be filed with the authority.

Where a Sino-foreign equity joint venture advertising enterprise is established, the basic information of shareholders of the Chinese party, and the credit certificates of such shareholders and the merged or acquired Chinese domestic advertising enterprise should be prepared. Moreover, the requirements of the abovementioned the Provisions on the

Administration of Foreign-funded Advertising Enterprises (2004) and the Interim Provisions for Foreign Investors to Merge Domestic Enterprises (2003) should be complied with as well.

### **Automobile Parts: Tax legislation amended as a result of WTO Action (WTO Dispute DS342)**

汽车配件：世贸作用改变了税收立法（世贸组织争端解决第342号）

### **Circular of the Customs Tariff Commission of the State Council Regarding Adjusting the Tariffs of Automobile Commodities and Applying Relevant Conventional Tariff Rate and Preferential Tariff Rate (No. 13[2006])**

国务院关税税则委员会关于调整汽车等商品关税税率及实施有关协定税率特惠税率的通知（税委会[2006]13号）

**Issued by** Ministry of Finance  
**Subject** Imports of Automobile Parts  
**Promulgated** June 15<sup>th</sup> 2006  
**Effective from** July 1<sup>st</sup> 2006  
**Source** [www.mof.gov.cn](http://www.mof.gov.cn) and [www.wto.org](http://www.wto.org)

On 15 June 2006, the Ministry of Finance issued the Circular of the Customs Tariff Commission of the State Council Regarding Adjusting the Tariffs of Automobile Commodities and Applying Relevant Conventional Tariff Rate and Preferential Tariff Rate (the “Circular”), in which it announced that tariffs imposed on imported vehicles and automobile parts would be reduced from 1 July 2006, the tariff rate of 31 tax items on vehicles will be reduce from 28% to 25%, and the tariff rate of 11 tax items on automobile parts will be cut to 10% from 13.8-16.4%.

The adoption of the Circular by the Ministry of Finance is the direct result of actions brought by the United States, the European Union and Canada (the “Complainants”) before the dispute settlement body (“DSB”) of the World Trade Organization (“WTO”).

Before the DSB, the Complainants had claimed that the Order No. 8 on Policy on Development of Automotive Industry of the National Development and Reform Commission of 21 May 2004, the Measures for the Administration of Importation of Automotive Parts and Components for Complete Vehicles and the Customs General Administration Public Announcement No. 4 establishing Rules for Determining Whether Imported Automotive Parts and Components Constitute CBU Vehicles, the latter two both of 1 April 2005, violated WTO law.

The main arguments brought forward by the Complainants was that China's regulations governing the importation of automobile parts penalized manufacturers for using imported automobile parts in the manufacture of vehicles for sale in China. Under the contested rules, if the imported parts were incorporated in a vehicle that contained imported parts in excess of specified thresholds, China was said to impose a charge on imported auto parts equal to the tariff on complete vehicles.

Furthermore, according to the Complainants, China's system was equivalent to subsidizing domestic producers of automobile parts, because the tariffs were contingent upon the use of domestic rather than imported goods. The contested rules specifically identified completely knocked down (CKD) and semi-knocked down (SKD) kits and were said to assess them the tariff for complete vehicles.

According to the Complainants, the Chinese automobile parts regime violated a number of WTO provisions from the GATT, the TRIMs Agreement, the SCM Agreement and China's Protocol on the Accession to the WTO and the corresponding WTO Working Party Report.

As was the case in a previous dispute brought before the DSB regarding China's tax regime for integrated circuits, calling upon the DSB to rule on China's WTO-consistency has brought about a change in China's tax regime. In this case, the amicable settlement reached through the pressure exercised on the WTO-level is a very welcome development for importers of automobile parts.

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