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Implementing Measures for the “PRC Regulations for Customs Protection of Intellectual Property Rights”

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 **The General Administration of Customs**
Subject **Intellectual Property**
Promulgated on **03rd March, 2009**
Effective from **01st July, 2009**
Source **<http://www.customs.gov.cn>**

In order to implementing the state’s intellectual property strategy, from the beginning of this year a series of laws and regulations related to intellectual property were promulgated. In January the new Patent Law was released and on 1st February 2009 the Ministry of Commerce has released the “Measures for the Administration of Registration of Technology Import and Export Contracts” (further information is provided in the following topic). Furthermore, on June 20th 2009, the State Administration for Industry and Commerce (SAIC) issued a revised draft of proposed amendments to the Trademark Law and the General Administration of Customs issued the Implementing Measures for the “PRC Regulations for Customs Protection of Intellectual Property Rights” (hereafter referred as “Measures”), which entered into force on 1st July, 2009.

According to these Measures, customs take measures to protect the intellectual property rights on request. A domestic intellectual property holder may apply by itself or appoint an agent to do so. For an overseas intellectual property right holder, its office in China or the appointed agent may submit the application.

For the purpose of customs protection on intellectual property rights, the intellectual property right holder shall submit the application letter, which contains the following information:

- i. The intellectual property right holder’s name, place of registration or nationality, correspondence address, and the detailed contact information of the contact person;
- ii. The detail information related to the registered trade mark, work and patent, for example: name, title or type; term of registration; details on the assignment and amendment, etc.
- iii. The name of the licensee, the goods to which the license applies, the license term, etc.;
- iv. The description of the goods on which the intellectual property right holder lawfully exercise rights, the origin, importer and exporter;

- v. The actual details on the goods infringing the intellectual property right as known.

The recording files shall be kept by customs for 10 years for the purpose of customs protection. To renew the recording files, the intellectual property right holder shall submit an application in writing within 6 months before expiration. For the sufficient protection of intellectual property rights, the intellectual property right holder may submit an application and request the customs to detain the alleged infringing goods as soon as the imported/exported goods in question are discovered. With the application, the intellectual property right holder shall be able to supply the following evidence:

- i. The goods in question are soon to be imported or exported; and
- ii. The goods in question are infringing his intellectual property rights.

When the customs Ex officio investigate imported/exported goods, which were discovered as infringing the intellectual property right, or the use of the relevant intellectual property rights has been placed on record, the Consignee/Consignor will be requested to report the details of the goods and the involved intellectual property rights. If the Consignee/Consignor fails to do so or the Customs have sufficient grounds for suspicion, the goods shall not be released and the intellectual property right holder will be informed in writing.

Measures for the Administration of Registration of Technology Import and Export Contracts

技术进出口合同登记管理办法

Issued By	The Ministry of Commerce
Subject	Trade, Contract Law
Promulgated on	01st February, 2009
Effective from	03rd March, 2009
Source	http://www.mofcom.gov.cn

On 1st February, 2009 the Ministry of Commerce has released the “Measures for the Administration of Registration of Technology Import and Export Contracts” (hereafter referred as “Measures”), which entered into force on 3rd March, 2009. The Measures were released to establish a system for the administration on the import and export of technology and to promote the development of China’s import and export of technology.

The technology import and export contracts include patent right assignment contracts, patent application right assignment contracts, patent licensing contracts, know-how licensing contract, technical services contracts, and other contracts containing provisions regarding the import and export of technology. The administrative department of MOFCOM is in charge of the registration. The registration has no influence on the validity of the import and export technology contracts. Such contracts come into force on the date, on which they are legally established.

The registration procedure shall be carried out within 60 days after the import and export contract enters into effect. However, for contracts according to which royalties have to be paid, the registration procedure shall be carried out within 60 days after the initial royalty payment has been made. Each royalty payment shall be followed by an amendment procedure.

Technology import contracts serving as capital investment or acting as an attachment to the article of association of a foreign invested company shall be subject to the procedures set out in the laws applicable to foreign-invested enterprises.

The free import and export technology contracts shall be registered online by the “Technology Import and Export Contract Information Management System” on MOFCOM’s government website.

The main contents of free technology import and export contract registration shall include:

- I. The contract number;
- II. The contract title;
- III. The technology supplier;
- IV. The technology receiver;
- V. The technology user;
- VI. The summary of the contract;
- VII. The value of the contract;
- VIII. The method of payment; and
- IX. The term of the validity of the contract.

The statistics on technology imports and exports nationwide shall be compiled and regularly published by MOFCOM.

Provisions for the Administration of the Provision of Financial Information Services in China by Foreign Organizations

外国机构在中国境内提供金融信息服务管理规定

Issued By **The state Council Information Office, Ministry of Commerce and State Administration for Industry and Commerce.**
Subject **Finance**
Promulgated on **30th April, 2009**
Effective from **01st June, 2009**
Source **<http://www.mofcom.gov.cn>**

On 30th April, 2009 the Ministry of Commerce, the State Council Information Office and State Administration for Industry and Commerce have together released the “Provisions for the Administration of the Provision of Financial Information Services in China by Foreign Organizations”, which entered into effect on 1st June, 2009.

The provisions are formulated to govern the financial information services in China by foreign organizations. The term “financial information services” means the services of providing information and/or financial data that could have an impact on financial markets to clients that engage in financial analysis, financial trading, financial decision making or other financial services.

The State Council Information Office is in charge of approval. Without approval, a foreign organization shall not provide financial information services.

A qualified foreign organization shall:

- i. have the appropriate lawful qualifications in its residing country;
- ii. have good reputation in the financial information services;
- iii. have a clear financial information services business;
- iv. have good means of transmission and technical services.

The approval for providing financial information services in China as a foreign organization shall be valid for two years. If it tends to continue the business, it shall apply for renewal of its document at least 30 days before the expiration.

A foreign organization shall provide financial information services strictly within its approved scope of business. The financial information provided in China by foreign organization will be synchronously scrutinized by the State Council Information Office. The

necessary support shall be provided by the foreign organization for free to the State Council Information Office.

Circular on Several Business Tax Exemption Polices for Individuals Purchasing Financial Products

关于个人金融产品买卖等营业税若干免税政策的通知

Issued By **The Ministry of Finance, The Administration of Taxation**
Subject **Tax**
Promulgated on **01st January, 2009**
Effective from **01st January, 2009**
Source <http://www.mofcom.gov.cn>

The Circular on Several Business Tax Exemption Polices for Individual Purchasing Financial Products (hereafter referred as Caishui [2009] No.111) was jointly promulgated by the Ministry of Finance and the State Administration of Taxation and entered into force on 1st January, 2009. The relevant Circulars on Business Tax Exemption Polices were abolished simultaneously.

The most important exemptions are introduced in the following:

1. Individuals (including individually-owned businesses and other individuals) shall be exempted from business tax for the income from the sale and purchase of foreign currencies, non-merchandise futures and other financial products.
2. The business tax of the gratuitous transfer of real estate and land-use rights by individuals under any of the following situations shall temporarily not be levied:
 - 1) Property division in a divorce;
 - 2) The gratuitous transfer to spouses, parents, children, grandparents, grandchildren or siblings;
 - 3) The gratuitous transfer to direct dependants;
 - 4) House property by the legal heir, testamentary heir or legatee upon the demise of the property owner;
3. Business tax for providing labor services to the overseas construction industry and cultural education industry shall temporarily not be levied.

4. Foreign entities or individuals who provide services in the cultural and sports industry, entertainment industry and service industries shall be exempted from business tax.

5. Under the following situation, the administrative fees and government funds shall be exempted from business tax. All the following conditions shall be met at the same time:
The government funds or administrative funds shall be approved by the State Council or the Ministry of Finance, or the provincial government and their finance or pricing administrative departments;
The financial administrative at the provincial level or above shall print the financial vouchers;
The full collected amount is submitted to the treasury.

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