

# CHINA LEGAL BRIEFING\* 161

NOVEMBER 13, NOVEMBER 17, 2006



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## **Catalogue of Prohibited Commodities in Processing Trade ([2006] Decree No. 82)**

加工贸易禁止类商品目录([2006]第82号)

Issued By	<b>The Ministry of Commerce; the General Administration of Customs, and the State Environmental Protection Administration</b>
Subject	<b>Processing Trade</b>
Promulgated on	<b>November 1<sup>st</sup> 2006</b>
Effective From	<b>November 22<sup>nd</sup> 2007</b>
Source	<b><a href="http://www.mofcom.gov.cn">www.mofcom.gov.cn</a></b>

The Catalogue of Prohibited Commodities in Processing Trade ([2006] Decree No. 82) (the “Catalogue”) is promulgated by the Ministry of Commerce, the General Administration of Customs, and the State Environmental Protection Administration of the People’s Republic of China, in line with the provisions of the Circular of the Ministry of Finance, the National Development and Reform Commission, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation of the People’s Republic of China on Adjusting the Tax Refund Rates of Some Export Commodities and Supplementing the Catalogue of Prohibited Commodities in Processing Trade (Caishui [2006] No. 139).

The business of processing trade approved by the competent commerce administrations prior to 22 November 2006 shall be permitted to be filed to the customs for registration for the processing trade, and such business shall be finished within the valid term of contract. For those so-called “network supervised enterprises” administrated based on the so-called “enterprise unit”, the processing trade business shall be allowed to be finished prior to 22 November 2007. In case the abovementioned processing trade business are not accomplished within the term, such term shall not be postponed, and relevant provisions on processing trade shall be applied to such failure.

In case enterprises applying for domestic distribution, the tax delaying interests shall be paid in accordance with the interest rate of the previous year as released by the People’s Bank of China of the date specified in the form of payment of customs duties, in line with the Announcement of the General Administration of Customs, the Ministry of Finance, the Ministry of Commerce, the People’s Bank of China and the State Administration of Taxation ([2006] Decree No. 52).

The Catalogue is also applicable to those special supervisory areas such as the bonded areas and the export processing zones. Only the enterprises established prior to the promulgation of the Catalogue might be excluded. In case of any discrepancies between

the Catalogue and the relevant provisions of the Announcement of the Ministry of Commerce, the General Administration of Customs and the State Environmental Protection Administration on Prohibiting the Processing Trade of Pesticide and Coal (Decree [2005] No. 105), the Catalogue shall prevail, and the remainder of the Decree No. 105 shall remain valid.

The Catalogue shall come into force as of 22 November 2006, dynamic adjustments might be made by the relevant state policies from time to time, and a Chinese version of the detailed Appendix is available on the website of the Ministry of Commerce.

### **Provisions on Anti-Money-Laundering through Financial Institutions (Order [2006] No.1)**

金融机构反洗钱规定(中国人民银行令[2006]第1号)

Issued By	<b>The People's Bank of China</b>
Subject	<b>Anti-Money-Laundering</b>
Promulgated on	<b>November 14<sup>th</sup> 2006</b>
Effective From	<b>January 1<sup>st</sup> 2007</b>
Source	<a href="http://www.mofcom.gov.cn">www.mofcom.gov.cn</a>

The Provisions on Anti-Money-Laundering through Financial Institutions (Order [2006] No.1) (the "Provisions") are enacted by the People's Bank of China (the "PBC") in order to prevent the movements of money-laundering, regulate the supervision and administration on anti-money-laundering and therefore maintain financial order in line with relevant laws such as PRC Anti-Money-Laundering Law.

The PBC is the administration on anti-money-laundering of the State Council, shall be responsible for the supervision and administration on affairs of anti-money-laundering, and the PBC might conduct international cooperation in terms of the authorization by the State Council.

The term "financial institutions" mentioned herein shall refer to the institutions incorporated within the territory of China including: commercial banks, credit unions, postal savings agencies, policy banks, securities companies; insurance companies; trust and investment companies; financial companies and other financial institutions specified by the PBC.

The responsibilities of the PBC generally shall be: enacting regulations; inspecting the cash flow of RMB and foreign currency; supervising and inspecting the execution of anti-

money-laundering by financial institutions; investigating suspicious dealings; reporting the suspicious crimes concerning money-laundering to the police department; exchanging information and data relevant for anti-money-laundering with overseas anti-money-laundering agencies in accordance with provisions of relevant laws and regulations; and other responsibilities prescribed by the State Council.

An inspection and analysis center for anti-money-laundering shall be established by the PBC and the responsibilities of which shall be: receiving and analyzing suspicious deals and deals with amounts above a certain limit, in RMB or foreign currencies; establishing an anti-money-laundering database and properly and carefully keeping the reported information provided by financial institutions concerning suspicious deals and deals with amounts above a certain limit; reporting the analyzing results to the PBC; exchanging information and data with relevant overseas agencies upon approval by the PBC; and other responsibilities proscribed by the PBC.

The Provisions also mention inter alia a system to recognize the identities of clients, the principles of PBC procedures for anti-money-laundering; the rights and responsibilities of the PBC and the suspects; the disciplines and penalties on misconducts of PBC staff; and punishments for financial institutions and their managerial staff.

## **Regulations of the People's Republic of China on the Administration of Foreign-Funded Banks**

中华人民共和国外资银行管理条例

Issued By	<b>The State Council of the People's Republic of China</b>
Subject	<b>Foreign-Funded Banks</b>
Promulgated on	<b>November 11<sup>th</sup> 2006</b>
Effective From	<b>December 11<sup>th</sup> 2006</b>
Source	<a href="http://www.gov.cn">www.gov.cn</a>

The Regulations of the People's Republic of China on the Administration of Foreign-funded Banks (the "Regulations") are enacted by the State Council with the purpose of encouraging the development of banking industry.

The term of "foreign-funded banks" mentioned herein shall refer to the following institutions established within the territory of China and in accordance with relevant PRC laws and regulations:

1. Solely foreign funded banks funded solely by a single foreign bank, or jointed funded by a foreign bank together with other foreign financial institutions;
2. Chinese-foreign joint venture banks established by foreign financial institutions together with Chinese companies and enterprises;

3. Branches of foreign banks; and
4. Representative offices of foreign banks. Among which, only item 1., 2. and 3. shall be recognized as the business operation organs of foreign-funded banks.

The terms of “foreign financial institutions” and “foreign banks” shall refer to the financial institutions and commercial banks established and registered outside the territory of China and have been approved or licensed by overseas local financial administrations.

The minimum limit of registered capital of solely foreign-funded banks and Chinese-foreign joint venture banks shall be one billion RMB or convertible currencies on a par with one billion RMB. The registered capital shall be the paid-in capital. In case a branch of the solely foreign-funded banks or the Chinese-foreign joint venture banks is established within the territory of China, the business operation funds of no less than 100 million RMB or convertible currencies on a par with 100 million RMB shall be transferred without any payment by and from the headquarters. In case a branch of foreign banks is established, such business operation funds shall be no less than 200 million RMB or convertible currencies on a par with 200 million RMB, and shall also be transferred without any payment by and from the headquarters.

The Regulations consist of seven chapters, namely, General Provisions, Establishment and Registration; Business Scope; Supervision and Administration; Termination and Liquidation; Legal Liabilities; and Appendix.

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