

# Regulations on Technology Import and Export Administration of the People's Republic of China

## Chapter I General Provisions

**Article 1** These Regulations are hereby formulated in accordance with the Law of the People's Republic of China on Foreign Trade (hereinafter referred to as the Foreign Trade Law) and relevant provisions of other relevant laws with a view to regulating the administration of technology import and export, maintaining the order of technology import and export, and enhancing the national economic growth and social development.

**Article 2** The technology import and export as referred to in these Regulations means acts of transferring technology from outside the territory of the People's Republic of China into the territory of the People's Republic of China or visa versa by way of trade, investment, or economic and technical cooperation.

The acts mentioned in the preceding paragraph include assignment of the patent right, assignment of the patent application right, licensing for patent exploitation, assignment of technical secrets, technical services and transfer of technology by other means.

**Article 3** The State adopts a uniform system for the administration of technology import and export, and maintains the order for fair and free technology import and export according to law.

**Article 4** Import and export of technology shall be conducted in compliance with the national policy of industry, the policy of science and technology, and the policy for social development, and shall be conducive to promoting the scientific and technologic progress in China, enhancing the development of foreign economic and technical cooperation, and safeguarding the economic and technical rights and interests of the country.

**Article 5** China permits free technology import and export, except that the laws and administrative regulations have otherwise provided for.

**Article 6** The competent department of foreign trade and economic cooperation under the State Council (hereinafter referred to as the competent foreign trade department under the State Council) is responsible for the national administration of technology import and export in accordance with the provisions of the Foreign Trade Law and these Regulations. The competent foreign trade departments under the People's Governments of the Provinces, Autonomous Regions and Municipalities under the Central Government shall, according to the authorization by the competent foreign trade department under the State Council, be responsible for the administration of technology import and export in their respective administrative region.

The departments concerned under the State Council shall, according to the regulations by the State Council, perform the relevant functions and responsibilities for the administration of projects of technology import and export.

## **Chapter II Administration of Technology Import**

**Article 7** The State encourages import of advanced and appropriate technology.

**Article 8** Import of any technology falling into the provisions of Articles 16 or 17 of the Foreign Trade Law shall be prohibited or restricted.

The competent foreign trade department under the State Council shall, in conjunction with other relevant departments under the State Council, formulate, regulate and publish catalogues of technologies the import of which is prohibited or restricted.

**Article 9** Technologies prohibited from import shall not be imported.

**Article 10** Technologies restricted from import shall be subject to the license administration; any technology for which no license is granted shall not be imported.

**Article 11** In respect of import of a technology restricted from import, an application for technology import, together with relevant documents, shall be filed with the competent foreign trade department under the State Council.

Where a project of technology import needs to be approved by the relevant department, the documents of approval thereby shall also be submitted.

**Article 12** The competent foreign trade department under the State Council, upon receipt of an application for technology import, shall conduct an examination, in conjunction with relevant departments under the State Council, of the application, and make a decision on approval or disapproval within thirty working days from the date of receipt of the application.

**Article 13** Where an application for technology import is approved, the competent foreign trade department under the State Council shall issue an letter of intent for licensing the technology import.

After being granted the letter of intent for licensing the technology import, an import operator may sign a contract for technology import with its overseas counterpart.

**Article 14** After signing a contract for technology import, an import operator shall submit to the competent foreign trade department under the State Council a copy of the contract for technology import and relevant documents to apply for the technology import license.

The competent foreign trade department under the State Council examines the authenticity of the contract for technology import, and makes a decision, within ten working days from the date of receipt of the documents provided for in the preceding provision, on the approval or disapproval of the technology import.

**Article 15** An applicant, when applying to the competent foreign trade department under the State Council according to the provision of Article 11 of these Regulations for technology import, may submit a copy of the technology import contract concluded.

The competent foreign trade department under the State Council shall, according to the provisions of Articles 12 and 14 of these Regulations, examine the authenticity of the application and the technology import contract, and decide, within forty working days from the date of receipt of the documents provided for in the preceding provision, on the approval or disapproval of the technology import.

**Article 16** Where the import of a technology is approved, the competent foreign trade department under the State Council issues the technology import license. The contract for technology import takes effect on the date of issuance of the technology import license.

**Article 17** Technologies freely importable shall be subject to the contract registration system. A contract for importing a freely importable technology takes effect from the time when the contract is established according to law, without taking the registration thereof as a condition for the contract to be effective.

**Article 18** When a freely importable technology is to be imported, registration shall be made with the competent foreign trade department under the State Council, and the following documents submitted:

- (1) an application for registration of the technology import contract;
- (2) a copy of the technology import contract; and
- (3) any regulatory document certifying the legal status of the two parties to the contract.

**Article 19** The competent foreign trade department under the State Council shall register the technology import contract and issue the certificate of registration of the technology import contract within three working days from the date of receipt of the documents provided for in Article 18 of these Regulations.

**Article 20** Applicants shall use the technology import license or certificate of registration of technology import contract to go through the foreign exchange, banking, taxation and customs formalities.

**Article 21** Where a technology import contract licensed or registered according to the provisions of these Regulations is changed in terms of the main contents thereof, the formalities shall be gone through once again for the license or registration thereof.

Any licensed or registered technology import contract which has terminated shall be submitted with the competent foreign trade department under the State Council for filing.

**Article 22** Where an enterprise with foreign investment is set up in which the foreign

party puts in a technology as its investment, the import of the technology shall be examined or registered in accordance with the procedure for examination and approval of the establishment of the enterprise with foreign investment.

**Article 23** The competent foreign trade department under the State Council, other relevant departments and the employees thereof shall be under the obligation to keep confidential any trade secret they get to know when performing their functions and duties of technology import and export administration.

**Article 24** The technology supplying party to a technology import contract shall ensure that he or it is the legitimate owner of the technology supplied or one who has the right to assign or license the technology.

Where the receiving party to a technology import contract is accused of infringement by a third party for using the technology supplied by the supplying party under the contract, the former shall immediately notify the latter; the latter, upon receipt of the notification, shall assist the former in removing the impediment.

Where the receiving party to a technology import contract infringes another person's lawful rights and interests by using the technology supplied by the supplying party, the supplying party shall bear the liability therefore.

**Article 25** The supplying party to an technology import contract shall ensure the technology it supplies is complete, accurate, effective and capable of achieving the agreed technical object.

**Article 26** The receiving and supplying parties to a technology import contract shall be under the obligation to keep confidential the undisclosed part of the technology the supplying party has supplied within the scope of confidentiality and time limit thereof as agreed in the contract.

Within the time of confidentiality, the obligation of one party to confidentiality shall terminate immediately after the confidential technology is disclosed for reasons not of his or its own.

**Article 27** Within the term of validity of a contract for technology import, an achievement made in improving the technology concerned belongs to the party making the improvement.

**Article 28** After a technology import contract expires, the technology supplying and receiving parties thereto may negotiate on the continued use of the technology according to the principle of justice and equity.

**Article 29** A technology import contract shall not contain any of the following restrictive clauses:

- (1) requiring the receiving party to accept any additional condition unnecessary for the technology import, including buying any unnecessary technology, raw material, product, equipment or service;
- (2) requiring the receiving party to pay exploitation fee for a technology when the term of validity of the patent right in which has expired or the patent right of which has been invalidated, or to undertake other relevant obligations;
- (3) restricting the receiving party from improving the technology supplied by the supplying party, or restricting the receiving party from using the improved technology;
- (4) restricting the receiving party from obtaining technology similar to that supplied by the supplying party from other sources or from obtaining a competing technology;
- (5) unduly restricting the receiving party from purchasing raw material, parts and components, products or equipment from other channels or sources;
- (6) unduly restricting the quantity, variety, or sales price of the products the receiving party produces; or
- (7) unduly restricting the receiving party from utilizing the channel for exporting products manufactured using the imported technology.

### **Chapter III Administration of Technology Export**

**Article 30** The State encourages exporting well-developed industrialized technology.

**Article 31** Any technology that falls under any of the provisions of Articles 16 or 17 of the Foreign Trade Law is prohibited or restricted from export. The competent foreign trade department under the State Council shall, in conjunction with other relevant departments under the State Council, formulate, regulate and publish catalogues of technologies which are prohibited or restricted from export.

**Article 32** Technology prohibited from export shall not be exported.

**Article 33** Technology restricted from export shall be subject to license administration; and shall not be exported without a license.

**Article 34** To export any technology restricted from export, an application shall be filed with the competent foreign trade department under the State Council.

**Article 35** The competent foreign trade department under the State Council shall, after receipt of a technology export application, examine the technology in respect of which application for export is filed in conjunction with the science and technology administrative department under the State Council, and decide on approval or disapproval within thirty working days from the date of receipt of the application.

Where a technology restricted from export requires confidential examination by the relevant department, the relevant regulations of the State shall be complied with.

**Article 36** Where an application for technology export is approved, the competent foreign trade department under the State Council shall issue a letter of intent for licensing the technology export. After obtaining the letter of intent for licensing the technology export, the applicant may begin substantive negotiation, and conclude a contract for the technology export.

**Article 37** After concluding a technology export contract, the applicant shall submit to the competent foreign trade department under the State Council the following documents in applying for a license for the exporting technology:

- (1) a letter of intent for licensing the technology export;
- (2) a copy of the technology export contract;
- (3) a list of technical information relating to the export; and
- (4) any regulatory document certifying the legal status of the two parties to the contract.

The competent foreign trade department under the State Council examines the authenticity of the technology export contract, and decides, within fifteen working days from the date of receipt of the documents provided for in the preceding provision, on approval or disapproval of the technology export.

**Article 38** Where a technology is licensed for export, the competent foreign trade department under the State Council issues the technology export license. The contract for technology export takes effect on the date of issuance of the technology export license.

**Article 39** Freely exportable technology shall be subject to the contract registration administration. A contract for exporting a technology takes effect from the time when the contract is established according to law without taking the registration thereof as a condition for the contract to be effective.

**Article 40** When a freely exportable technology is to be imported, registration shall be made with the competent foreign trade department under the State Council, and the following documents submitted:

- (1) an application for registration of the technology export contract;
- (2) a copy of the technology export contract; and
- (3) any regulatory document certifying the legal status of the contracting parties.

**Article 41** The competent foreign trade department under the State Council shall, within three working days from the date of receipt of the documents provided for in Article 40 of these Regulations, register the technology export contract, and issue the certificate of the registration of technology export.

**Article 42** Applicants shall use the technology export license or certificate of registration of the technology import contract to go through the foreign exchange, banking, taxation and customs formalities.

**Article 43** Where a technology import contract licensed or registered according to the provisions of these Regulations is changed in terms of the main contents thereof, the formalities shall be gone through once again for the license or registration thereof. Any licensed or registered technology export contract which has terminated shall be submitted to the competent foreign trade department under the State Council for filing.

**Article 44** The competent foreign trade department under the State Council, other relevant departments and the employees thereof shall be under the obligation to keep confidential the trade secret they get to know when performing their functions and duties of technology import and export administration.

**Article 45** Exporting a nuclear technology, a relevant technology of nuclear products for both military and civil purposes, a technology for supervising or monitoring the manufacture of chemicals, a technology for military purposes, or any other technology under export control shall be conducted pursuant to the relevant administrative laws and regulations.

#### **Chapter IV Legal Liabilities**

**Article 46** Where a technology prohibited or restricted from import and export is imported or exported without approval shall be prosecuted for criminal liability according to the provisions for the crimes of smuggling, illegal business operation, or divulging national secrets or other crimes under the Criminal Law. Where such import or export is not so serious as to be prosecuted for criminal liability, penalty shall be imposed according to the circumstances pursuant to the relevant provisions of the Customs Law, or the competent foreign trade department under the State Council issues a warning against it, confiscates illegal income and/or imposes a fine one to five times the illegal income. The competent foreign trade department under the State Council may revoke the foreign trade business license.

**Article 47** Any act of importing or exporting technology restricted from import or export by exceeding the scope of business licensed shall be prosecuted for criminal liability according to the provisions for the crime of illegal business operation, or other crimes under the Criminal Law. Where the act of import or export is not so serious as to be prosecuted for criminal liability, penalty shall be imposed according to the circumstances pursuant to the relevant provisions of the Customs Law, or the competent foreign trade department under the State Council issues a warning against it, confiscates illegal income

and/or imposes a fine one to three times the illegal income. The competent foreign trade department under the State Council may suspend, and even revoke, the foreign trade business license.

**Article 48** Any act of forging, mutilating, selling or buying technology import and export licenses or certificates of registration of contract for technology import and export shall be prosecuted for criminal liability according to the provisions for the crime of illegal business operation, or for the crimes of forging, mutilating, selling or buying official documents, certificates, and seals of State authority under the Criminal Law. Where the act of import or export is not so serious as to be prosecuted for criminal liability, penalty shall be imposed according to the circumstances pursuant to the relevant provisions of the Customs Law. The competent foreign trade department under the State Council may revoke the foreign trade business license.

**Article 49** Where a technology import and export license is acquired by fraudulent or any other illegal means, the competent foreign trade department under the State Council shall cancel the technology import and export license, and suspend and even revoke the business license for foreign trade.

**Article 50** Where a contract for technology import and export is registered by fraudulent or any other illegal means, the competent foreign trade department under the State Council shall cancel the certificate of registration of contract for technology import and export, and suspend and even revoke business license for foreign trade.

**Article 51** Any employee of technology import and export administration acts in violation of the provisions of these Regulations, divulges any State secret or trade secret known to him shall be prosecuted for criminal liability according to the provisions for the crime of divulging State secret or infringing trade secret under the Criminal Law. Where the act is not so serious as to be prosecuted for criminal liability, he shall be imposed the administrative penalty according to law.

**Article 52** Any employee of technology import and export administration who abuses his official power, ignores his duty, or takes advantage of his official position to seek or seize financial and property gains from others shall be prosecuted for criminal liability according to the provisions for the crime of abusing official power, ignoring duty, taking bribe, or any other crime under the Criminal Law. Where the act is not so serious as to be prosecuted for criminal liability, he shall be imposed the administrative penalty according to law.

## **Chapter V Supplementary Provisions**

**Article 53** Any one who is dissatisfied with a decision made by the competent foreign trade department under the State Council on a matter of approval, license, registration of, or administrative penalty in respect to, technology import and export may apply for administrative reconsideration, or institute legal proceedings in the People's Court according to law.



**Article 54** Where the provisions of the regulations on technology import and export formulated by the State Council before the issuance of these Regulations and those of these Regulations are not consistent, these Regulations prevail.

**Article 55** These Regulations enter into force on 1 January 2002. The Regulations of the People's Republic of China on Administration of Technology Introduction Contracts issued by the State Council on 24 May 1985 and the Implementing Regulations of the Regulations of the People's Republic of China on Administration of Technology Introduction Contracts approved by the State Council on 30 December 1987 and issued by the Ministry of Foreign Trade and Economic Cooperation on 20 January 1988 are simultaneously abrogated.