

**China - Provisional Regulations on Trade
Administration of Technology
Introduction and Equipment Importation,
1996**

MOFTEC

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Provisional Regulations on Trade Administration of Technology Introduction and Equipment Importation (Promulgated by Ministry of Foreign Trade and Economic Cooperation on March 22, 1996)

Chapter 1 - General Provisions

Article 1

These Regulations are hereby formulated for purposes of responding to the advancement of socialist market economy, promoting a healthy development in the introduction of technology and importation of equipment upholding the operational order of technology introduction and equipment importation, regularizing the operations of introducing technology and importing equipment, improving the administration of contracts on technology introduction and equipment importation and establishing a system of information management for introducing technology and importing equipment.

Chapter 2 - Scope of Application

Article 2

These Regulations are applicable to all the technology and equipment, which legal persons (consisting of Sino*-Foreign joint ventures, cooperative, enterprises and wholly foreign-owned enterprises, natural persons and other institutions within the boundary of the People's Republic of China acquired from legal persons, natural persons and other institutions beyond the border of the people's Republic of China by means of trade and cooperation, including;

1. Permit or transfer of patents;
2. Permit or transfer of specialized technology;
3. Import or computer software;
4. Permit or transfer of the trademarks of items included in clause 1 and 2 above;
5. Technical consultation;
6. Technical services;
7. Cooperation in design, research and development;
8. Production cooperation;
9. Import of complete plant and production line;

10.Import of key equipment 17

11.Other items . 18

Article 3 19

The import of technology and equipment which had been invested as capital stocks upon the establishment of the Sino-Foreign joint venture, cooperative enterprise or wholly foreign-owned enterprise shall abide by the regulations of the Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures and its Implementation Rules. 20

Chapter 3 - Administration Institutions of Technology Introduction and Equipment Importation 21

Article 4 22

The administration institutions of technology introduction and equipment importation is the Ministry of Foreign Trade and Economic Cooperation (MOFTEC)of the People's Republic of China, as well as departments, commissions and bureaus of foreign trade and economic cooperation authorized by MOFTEC in various provinces, autonomous regions, municipalities directly under the Central Government and special economic zones (hereinafter referred to as Department of Foreign Administration). 23

Article 5 24

MOFTEC shall be responsible for the management on foreign trade of technology introduction and equipment importation projects approved by functional departments of the State Council or enterprises under separate plans authorized by the State Council. Project of technology introduction and equipment approved by functional department of the People's Government of various Provinces, autonomous regions, municipalities directly under the Central Government and special economic zones shall be administrated by the department, commission or bureau of foreign trade and economic cooperation in the province, autonomous regions, municipality directly under the Central Government or the special economic zone with authorization granted by MOFTEC. 25

Article 6 26

Department of Foreign Administration shall participate in such preparatory work as drawing up the project for technology introduction within its limits of granted authorization. 27

Chapter 4 - Administration on Undertaking or Acting as Agent for Projects of Technology Introduction and Equipment Importation 28

Article 7 29

Undertaking or acting as agent for foreign trade of technology introduction and equipment import projects shall follow the pattern of taking effect upon registration. 30

Article 8 31

A legal person or institution with operational right of foreign trade(hereinafter referred to as Unit of Foreign Trade)can undertake itself or entrust freely another Unit of Foreign Trade as its agent for foreign trade of technology introduction and equipment importation. 32

Legal persons or institutions who are not authorized to carry out foreign trade can entrust Unit of Foreign Trade to act as agent for them in undertaking foreign trade of technology introduction and equipment importation. 33

The two sides shall sign formal contracts of trust on foreign trade agency in compliance with the Provisional Rules on Foreign Trade Agency System promulgated by MOFTEC on August 29,1991. 34

Article 9 35

After undertaking or being entrusted to act as agent for foreign trade of technology introduction and equipment importation, Units of Foreign Trade shall go through registration formalities in Department of Foreign Administration. 36

Article 10 37

Requirements for the registration of undertaking or acting as agent for projects of technology introduction and equipment importation are as follows: 38

1.The applicant shall have the right to carry out foreign trade; 39

2.The formalities must be complete for the registration of undertaking or acting as agent for projects of technology introduction and equipment importation (including the “registration Form for Undertaking or Acting as Agent for Projects of Technology Introduction and Equipment Importation”, and a copy of the contract of trust on foreign trade agency formally signed by the two sides.) 40

Article 11 41

When Department of Foreign Administration receives the complete application documents, 42
it shall decide within 15 workdays whether registration shall be granted.

Article 12 43

After the Department of Foreign Administration check the formalities and find them correct, 44
it shall produce the registration form for undertaking or acting for projects of technology
introduction and equipment importation with the special stamp for effective registration
and a serial number.

Unified printing of the “Registration Form of Undertaking or Acting as Agent for Projects of 45
Technology Introduction and Equipment Importation” shall be accomplished by MOFTEC.

Article 13 46

Units of Foreign trade shall carry out foreign trade of technology introduction and equip- 47
ment importation project after the registration, and together with the unit who launch the
project shall accomplish other administrative formalities for technology introduction and
equipment importation in compliance with State regulations.

Article 14 48

After registration for undertaking or acting as agent for the project of technology introduc- 49
tion and equipment importation, if relations among parties concerned must be changed or
relieved, they shall re-register in the Department of Foreign Administration or nullify the
registration.

**Chapter 5 - Management of Contracts for Technology Introduction 50
and Equipment Importation**

Article 15 51

Contracts for technology introduction and equipment importation shall take effect upon 52
registration unless State rules and regulations in force have other special stipulations.

Article 16 53

Contracts for technology introduction and equipment importation shall not: 54

1. Violate regulations of related laws of the People's Republic of China; 55
2. Violate relevant regulations of Rules on Management of contract for Technology Introduction of the People's Republic of China and its Detailed Implementation Rules. 56
3. Violate international duties promised by the People's Republic of China. 57

Article 17 58

Within 30 days of the formal signing of the Contract for Technology Introduction and Equipment Importation, Unit of Foreign Trade shall apply to Department of Foreign Administration for registration. 59

Article 18 60

Documents necessary for registration of contracts for technology introduction and equipment importation: 61

1. A copy of legal certificate for qualification of carrying out foreign trade; 62
2. A copy of the "Registration Form of Undertaking or Agent for Projects of Technology Introduction and Equipment Importation". 63
3. Filled "Application Form for Registration of Contracts for Technology Introduction and Equipment Importation." 64

Article 19 65

Department of Foreign Administration shall decide within 30 days whether the registration shall be effective when it receives the complete documents of registration application for contracts of technology introduction and equipment importation. 66

Article 20 67

After Department of Foreign Administration has checked the contract for technology introduction and equipment importation and deem it in conformity with regulations, "Certificate for Effective Registration of Contract for Technology Introduction and Equipment Importation" unifiedly* printed by MOFTEC shall be granted with a serial number. 68

Article 21 69

State departments concerned shall go through relevant formalities with the "Certificate for Effective Registration of Contract for Technology Introduction and equipment Importation". 70

Article 22

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When the contract for technology introduction and equipment importation has taken effect upon registration, any changes to it shall be declared to Department of Foreign Administration, which shall produce a "Revision Certificate for the Contract of Technology Introduction and Equipment Importation" after rechecking.

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Article 23

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MOFTEC shall release the name list of those Units of Foreign Trade who make an outstanding performance for companies to choose from, in consideration with their registration for undertaking or acting as agent for projects of technology introduction and equipment importation and the registration of contracts.

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Chapter 6 - Information Management of Technology Introduction and Equipment Importation

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Article 24

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Department of Foreign Administration shall collect, sort, save and analyze the information of technology introduction and equipment importation by means of administrating the technology introduction and equipment importation or other means within its limits of authorization.

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Article 25

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MOFTEC shall be responsible for gathering, sorting, analyzing and saving the information throughout the country for exchanging information of technology introduction and exchanging information of technology introduction and equipment importation with State department of comprehensive economic management, and releasing it jointly; for providing relevant information on technology introduction and equipment importation for the State's policy-making.

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Article 26

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In compliance with the regulations above, Unit of Foreign Trade should report to Department of Foreign Administration the information of technology introduction and equipment importation, which is conducive to a solid foundation for the State's macro policy-making.

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Chapter 7 - Duties and Penalties

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Article 27

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If Unit of Foreign Trade fails to comply with the related administration procedures of technology introduction and equipment importation as stipulated in the Regulations, Department of Foreign Administration shall punish it according to the seriousness of the case:

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1.Circulate a notice of criticism;

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2.Suspend its qualification to undertake or act as agent for projects of technology introduction and equipment importation in certain fields and trades;

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3.Suspend its qualification to undertake or act as agent for all projects of technology introduction and equipment importation;

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Punishments above-mentioned can be imposed jointly.

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Article 28

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When there are acts of deception on the part of Unit of Foreign Trade in the registration of undertaking or acting as agent for projects of technology introduction and equipment importation or in the registration for contracts of technology introduction and equipment importation, such penalties shall be imposed by Department of Foreign Administration as:

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1.Disqualify it to undertake or act as agent for projects of technology introduction and equipment importation;

91

2.Nulify the registration of contract for technology introduction and equipment importation and declare the contract invalid;

92

If the case is serious enough to constitute a crime, it shall be investigated for criminal responsibilities according to law.

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Article 29

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Unit of Foreign Trade who refuses to accept the decision of administrative penalty can apply to the reconsideration Office in MOFTEC for reconsideration in line with the relevant procedures stipulated in Provisions for Administration Reconsideration of the People's Republic of China.

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Article 30 96

Any acts that violate laws or administrative regulations by staff of Department of Foreign Administration in carrying out the management system of technology introduction and equipment importation shall be investigated under law or given administrative discipline in accordance with related State laws and administrative regulations. 97

Chapter 8 - Supplementary Provisions 98

Article 31 99

Foreign trade projects of technology introduction and equipment importation which have been put under the management of State technology introduction planning, and whose source of capital and channel of capital shall be arranged by State Planning Commission, State Economic and Trade Commission and the department in charge of various trades shall be dealt with in line with the principle and procedures formulated in the Administrative Rules on Undertaking or Acting as Agent for the State's Project of Technology Introduction and Equipment Importation.(Document Ji Fa No.135[1995] issued by MOFTEC) 100

Article 32 101

MOFTEC shall be responsible for the interpretation of these Regulations. 102

Article 33 103

These Regulations shall enter into effect from the date of promulgation. 104

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