

Regulations on Administration of Import and Export of Technique

(Promulgated by the State Council

on 10 December 2001 and effective as of 1 January 2002.)

PART ONE GENERAL PROVISIONS

Article 1 These Regulations are formulated in accordance with the PRC, Foreign Trade Law (the Foreign Trade Law) and the relevant provisions of other relevant laws in order to regulate the administration of technology import and export, maintain the order of technology import and export, and facilitate national economic and social development.

Article 2 Technology import and export referred to in these Regulations means the act of transferring technology from outside the territory of the People's Republic of China to inside the territory of the People's Republic of China or from inside the territory of the People's Republic of China to outside the territory of the People's Republic of China by way of trade, investment or economic technological cooperation.

The act referred to in the preceding paragraph shall include the transfer of a patent, transfer of right to apply for a patent, licence for patent implementation, transfer of know-how, transfer of technology through technical services and other means.

Article 3 The State shall implement a unified administrative system for technology import and export in order to maintain the order of fair and free import and export of technology according to law.

Article 4 Technology import and export shall comply with the industrial policies, scientific and technological policies, and social development policies of the State, benefit China's scientific and technological progress and development of foreign economic and technological cooperation, and benefit the maintenance of China's economic and technological rights and interests.

Article 5 The State permits the free import and export of technology, unless otherwise provided by laws and administrative regulations.

Article 6 The department in charge of foreign trade and economic cooperation of the State Council (the State Council Foreign Trade Department) shall be responsible for the State's administration of technology import and export in accordance with the provisions of the Foreign Trade Law and these Regulations. The departments in charge of foreign trade and economic cooperation of the people's governments of the provinces, autonomous regions and municipalities directly under the central government shall be responsible for the administration of technology import and export in their respective

administrative regions based on authorization by the State Council Foreign Trade Department.

The relevant department(s) of the State Council shall perform the relevant administrative duties in respect of technology import and export projects pursuant to the State Council provisions.

PART TWO ADMINISTRATION OF TECHNOLOGY IMPORT

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

Article 8 The import of technology that falls into one of the circumstances prescribed in Article 16 and Article 17 of the Foreign Trade Law shall be prohibited or restricted.

The State Council Foreign Trade Department shall, together with the relevant department(s) of the State Council, formulate, adjust and promulgate the list of technologies the import of which is prohibited or restricted.

Article 9 Technology the import of which is prohibited may not be imported.

Article 10 A licensing system shall be adopted for technology the import of which is restricted, and no import without a licence shall be allowed.

Article 11 To import technology the import of which is restricted, an application for the import of the technology shall be filed with the State Council Foreign Trade Department together with the relevant documents.

In the event that the technology import project is subject to approval by the relevant department(s), the approval documents from the relevant department(s) shall also be submitted.

Article 12 Upon receipt of an application for the import of technology, the State Council Foreign Trade Department shall, together with the relevant department(s) of the State Council, examine the application and shall decide whether to approve or disapprove the application within 30 working days from the receipt of the application.

Article 13 If the application for the import of technology is approved, the State Council Foreign Trade Department shall issue a letter of intent on technology import licensing.

Upon the obtaining of the letter of intent on technology import licensing, the import operator may sign the technology import contract with the foreign party.

Article 14 Upon the signing of the technology import contract, the import operator shall submit a duplicate copy of the technology import contract and the relevant

documents to the State Council Foreign Trade Department to apply for the technology import permit.

The State Council Foreign Trade Department shall examine the authenticity of the technology import contract and decide whether or not to permit the import of the technology within 10 working days from the receipt of the documents set out in the preceding paragraph.

Article 15 At the time of submitting the application for the import of technology to the State Council Foreign Trade Department pursuant to Article 11 hereof, the applicant may also submit a duplicate copy of the signed technology import contract.

The State Council Foreign Trade Department shall examine the application and the authenticity of the technology import contract in accordance with Article 12 and Article 14 hereof and decide whether or not to permit the import of the technology within 40 working days from the receipt of the documents set out in the preceding paragraph.

Article 16 If the import of technology is permitted, the State Council Foreign Trade Department shall issue a technology import licence. The technology import contract shall become effective from the date on which the technology import licence is issued.

Article 17 A contract registration system shall be adopted for technology that may be freely imported.

For technology that may be freely imported, the contract shall become effective when the contract is formed according to law, and the registration of the contract shall not be a condition precedent for the effectiveness of the contract.

Article 18 When importing technology that may be freely imported, registration procedure with the State Council Foreign Trade Department shall be carried out and the following documents shall be submitted:

1. an application for the registration of the technology import contract;
2. a duplicate copy of the technology import contract; and
3. documents evidencing the legal status of the contracting parties.

Article 19 The State Council Foreign Trade Department shall register the technology import contract and issue the technology import contract registration certificate within three working days from the receipt of the documents set out in Article 18 hereof.

Article 20 The applicant shall complete the formalities in respect of foreign exchange, banking, taxation, customs, etc. on the strength of the technology import licence or technology import contract registration certificate.

Article 21 If the main content of a technology import contract that has been permitted or registered pursuant to the provisions of these Regulations is changed, the formalities in respect of the licence or registration shall be carried out again.

In the event of termination of a technology import contract that has been licensed or registered, record filing to the State Council Foreign Trade Department shall be made promptly.

Article 22 If a foreign investor uses technology as investment in connection with the establishment of a foreign investment enterprise, the import of such technology shall be examined or registered in accordance with the examination and approval procedure for the establishment of a foreign investment enterprise.

Article 23 The State Council Foreign Trade Department and the relevant department(s) and their staff shall have the obligation to keep confidential the trade secrets that they have become aware of in the performance of their duties in connection with the administration of technology import.

Article 24 The licensor of a technology import contract shall warrant that it is the lawful owner of the technology to be provided or that it is the person who has the right to transfer or licence.

If the licensee of a technology import contract uses the technology provided by the licensor according to the contract and is accused of infringement by a third party, the licensee shall immediately notify the licensor, and the licensor shall upon receipt of the notice assist the licensee in removing the obstacles.

If the use of the technology provided by the licensor by the licensee of a technology import contract in accordance with the contract infringes upon the lawful rights and interests of another person, the responsibility shall be borne by the licensor.

Article 25 The licensor of a technology import contract shall warrant that the technology provided by it is complete, free of error, valid and capable of achieving the agreed technological target.

Article 26 The licensee and licensor to a technology import contract shall undertake the obligation of confidentiality in respect of the confidential part of the technology provided by the licensor that has not been made public to the extent, and within the term, of confidentiality stipulated in the contract.

After confidential technology has been made public during the term of confidentiality for reasons not attributable to the party who has the obligation of confidentiality, the confidentiality obligation undertaken by it shall be terminated.

Article 27 During the valid term of a technology import contract, the fruits of improvements to the technology shall belong to the party making the improvements.

Article 28 Upon the expiration of the term of a technology import contract, the licensor and licensee of the technology may discuss the continual use of the technology in accordance with the principles of fairness and reasonableness.

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

1. requiring the licensee to accept attached conditions that are not absolutely necessary for the import of the technology, including the purchase of technology, raw materials, products, equipment or services that are not necessary;

2. requiring the licensee to pay royalties or to undertake relevant obligations for the technology when the valid term of the patent has already expired or the patent has been declared to be invalid;

3. restricting the licensee from making improvements to the technology provided by the licensor or restricting the licensee from using improved technology;

4. restricting the licensee from acquiring from other sources technology similar to, or competitive with, the technology provided by the licensor;

5. unreasonably restricting the channels or sources from which the licensee buys raw materials, parts and components, products or equipment;

6. unreasonably restricting the quantity, type or sale price of the products manufactured by the licensee; or

7. unreasonably restricting the export channels of the products manufactured by the licensee with the imported technology.

PART THREE ADMINISTRATION OF TECHNOLOGY EXPORT

Article 30 The State encourages the export of mature industrialized technology.

Article 31 The export of technology that falls into one of the circumstances prescribed in Articles 16 and 17 of the Foreign Trade Law shall be prohibited or restricted.

The State Council Foreign Trade Department shall, together with the relevant department(s) of the State Council, formulate, adjust and promulgate the list of technologies the export of which is prohibited or restricted.

Article 32 Technology the export of which is prohibited may not be exported.

Article 33 An export licensing system shall be adopted for technology the export of which is restricted, and no export without a licence shall be allowed.

Article 34 To export technology the export of which is restricted, an application for the export of the technology shall be filed with the State Council Foreign Trade Department.

Article 35 Upon receipt of an application for the export of technology, the State Council Foreign Trade Department shall, together with the State Council administrative department of science and technology, examine the application for the export of technology and shall decide whether to approve or disapprove the application within 30 working days from the receipt of the application.

If the technology the export of which is restricted needs to be examined on a confidential basis, it shall be conducted in accordance with the relevant provisions of the State.

Article 36 If the application for the export of technology is approved, the State Council Foreign Trade Department shall issue a proposal for technology export licence.

Only upon obtaining the proposal for technology export licence may the applicant carry out substantive negotiations and sign the technology export contract.

Article 37 Upon the signing of the technology export contract, the applicant shall submit the following documents to the State Council Foreign Trade Department to apply for the technology export licence:

1. the proposal for technology export licence;
2. a duplicate copy of the technology export contract;
3. the list of technology materials to be exported; and
4. documents evidencing the legal status of the contracting parties.

The State Council Foreign Trade Department shall examine the authenticity of the technology export contract and shall decide whether to approve or disapprove the export of technology within 15 working days from the receipt of the documents set out in the preceding paragraph.

Article 38 If the export of technology is permitted, the State Council Foreign Trade Department shall issue a technology export licence. The technology export contract shall become effective from the date on which the technology export licence is issued.

Article 39 A contract registration system shall be adopted for technology that may be freely exported.

For technology that may be freely exported, the contract shall become effective when the contract is formed according to law, and the registration of the contract shall not be a condition precedent for the effectiveness of the contract.

Article 40 When exporting technology that may be freely exported, registration procedure with the State Council Foreign Trade Department shall be carried out and the following documents shall be submitted:

1. the application for the registration of technology export contract;
2. a duplicate copy of the technology export contract; and
3. documents evidencing the legal status of the contracting parties.

Article 41 The State Council Foreign Trade Department shall register the technology export contract and issue the technology export contract registration certificate within three working days from the receipt of the documents set out in Article 40 hereof.

Article 42 The applicant shall complete the formalities in respect of foreign exchange, banking, taxation, customs, etc. on the strength of the technology export licence or the technology export contract registration certificate.

Article 43 If the main content of a technology export contract that has been licensed or registered pursuant to the provisions of these Regulations is changed, the formalities in respect of the licence or registration shall be carried out again.

In the event of termination of a technology export contract that has been licensed or registered, record filing to the State Council Foreign Trade Department shall be made promptly.

Article 44 The State Council Foreign Trade Department and the relevant department(s) and their staff shall have the obligation to keep confidential the State secrets and trade secrets that they have become aware of in the performance of their duties in connection with the administration of technology export.

Article 45 The export of any technology that is under export control such as nuclear technology, technology relating to dual-use nuclear products, manufacturing

technology for controlled chemical products and military technology shall be carried out in accordance with the relevant administrative rules and regulations.

PART FOUR LEGAL LIABILITY

Article 46 In the case of the import or export of technology that is prohibited from being imported or exported or the import or export, without authorization, of technology that is restricted from being imported or exported, criminal liability shall be pursued according to the provisions on the crime of smuggling, the crime of illegal operations, the crime of disclosure of State secrets or other crimes under the criminal law. If not serious enough for the imposition of criminal penalties, depending on the circumstances, penalties shall be imposed pursuant to the relevant provisions of the customs law, or a warning shall be given by the State Council Foreign Trade Department, the illegal income shall be confiscated, a fine of not less than one time and not more than five times of the illegal income shall be imposed, and the State Council Foreign Trade Department may at the same time revoke the foreign trade operation permit.

Article 47 In the case of import or export of technology that is restricted from being imported or exported beyond the scope of licensing without authorization, criminal liability shall be pursued according to the provisions on the crime of illegal operations or other crimes under the criminal law. If not serious enough for the imposition of criminal penalties, depending on the circumstances, penalties shall be imposed pursuant to the relevant provisions of the customs law, or a warning shall be given by the State Council Foreign Trade Department, the illegal income shall be confiscated, a fine of not less than one time and not more than three times of the illegal income shall be imposed, and the State Council Foreign Trade Department may at the same time suspend or revoke the foreign trade operation permit.

Article 48 In the case of forging, altering, purchasing or selling technology import or export licences or technology import or export contract registration certificates, criminal liability shall be pursued according to the provisions on the crime of illegal operations or the crime of forging, altering, purchasing or selling State authority documents, certificates or chops under the criminal law. If not serious enough for the imposition of criminal penalties, depending on the circumstances, penalties shall be imposed pursuant to the relevant provisions of the customs law, and the State Council Foreign Trade Department may at the same time revoke the foreign trade operation permit.

Article 49 Where a technology import or export licence is obtained by fraud or other improper means, the State Council Foreign Trade Department shall cancel the technology import or export licence, and suspend or revoke the foreign trade operation permit.

Article 50 Where a technology import or export contract registration certificate is obtained by fraud or other improper means, the State Council Foreign Trade Department

shall cancel the technology import or export contract registration certificate, and suspend or revoke the foreign trade operation permit.

Article 51 In the case of disclosure by the technology import and export administration staff of the State secrets or trade secrets that they have become aware of in violation of these Regulations, criminal liability shall be pursued according to the provisions of the criminal law relating to the crime of disclosure of State secrets or crime of infringement on trade secrets. If not serious enough for the imposition of criminal penalties, administrative penalties shall be imposed according to the law.

Article 52 In the case of abuse of authority, neglect of duty or accepting or soliciting property from others by the technology import and export administration staff by taking advantage of their positions, criminal liability shall be pursued according to the provisions of the criminal law relating to the crime of abuse of authority, the crime of neglect of duties, the crime of accepting bribes or other crimes. If not serious enough for the imposition of criminal penalties, administrative penalties shall be imposed according to the law.

PART FIVE SUPPLEMENTARY PROVISIONS

Article 53 If any person is not satisfied with any approval, licensing, registration or administrative penalties made by the State Council Foreign Trade Department, he may apply for administrative review or bring an action with the people's court in accordance with the law.

Article 54 In the case of any inconsistency between any provisions promulgated by the State Council on the administration of the import and export of technology before the promulgation of these Regulations, these Regulations shall prevail.

Article 55 These Regulations shall be implemented as of 1 January 2002. The PRC, Administration of Technology Import Contracts Regulations promulgated by the State Council on 24 May 1985, and the PRC, Administration of Technology Import Contracts Regulations Implementing Rules approved by the State Council on 30 December 1987 and promulgated by the Ministry of Foreign Economic Relations and Trade on 20 January 1988 shall be repealed at the same time.