

The Legal changes on foreign trade and economic Co-operation to support China's WTO Accession

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Both of the process and result of China's reform, opening-up and WTO accession require, as a priority, the establishment of a uniform, reasonable and transparent legal system on the administration of foreign trade and economic co-operation. Therefore, Chinese government has been working on the clearance of laws, regulations, bilateral and multilateral agreements on foreign trade and economic co-operation in accordance with the WTO rules and its commitments of WTO accession.

Now, I'm glad to have this honour to present briefly what has occurred in foreign trade law reform in the past two and a half years and further plans to be carried out in China.

Part I The Clearance of laws and regulations on foreign trade and economic co-operation

As the competent authority of Chinese foreign trade and economic co-operation, MOFTEC has carefully carried out the clearance of laws and regulations relating to the WTO agreements and Chinese commitments. Under the uniform guidance of the State Council of PRC, an *ad hoc* "WTO Legal Group" was established in MOFTEC at the beginning of 2000. The head of the group is Minister Shi Guangsheng. This group is in charge of the classification and clearance of massive laws, administrative regulations, ministerial rules and other effective regulatory documents on foreign trade and economic co-operation (hereinafter referred to be as "legal documents").

The process of clearance was carried out in two stages. First-stage work was the sorting-out of legal documents. By the end of 2001, 1413 legal documents had been sorted out, consisting of 6 national laws, 164 regulations and 887 ministerial rules. Second-stage work was the classification of these legal documents in accordance with the WTO agreements for abolishment, amendment and retention. So far, 381 legal documents have been abolished and 51 pieces have been amended. Furthermore, 10 new legal documents have been promulgated in the past two years to satisfy the requirement of WTO entry, and 10 more will come up soon.

The clearance movement in MOFTEC is scheduled to end by the middle of this year. As a result, MOFTEC has resolved to compile all effective legal documents relating to foreign trade, foreign direct investment and intellectual property in China and then publish them in serial volumes. The first volume has come up last month.

Part II Introduction to the amendment and formulation of laws and regulations

The amendment and formulation of laws and regulations in China involved the participation of competent authorities of different sectors. This is a positive display of China's further reform and opening-up policy.

1. Regulations on foreign trade of goods and technology

Pursuant to Foreign Trade Law of PRC, WTO agreements and China's commitments, with reference to legislations of other WTO members, MOFTEC amended "Regulations on Anti-dumping" and "Regulations on Countervailing" and drafted "Regulations on Safeguards", "Regulations on Import and Export of Goods", "Regulations on Import and Export of Technology", etc. These important regulations, with aim of liberalisation and deregulation of foreign trade, construct a transparent and fair legal framework for the export and import. They have come into forth as of January 1, 2002.

2. Foreign direct investment laws and implementing regulations

In 2000 and 2001, the National People's Congress of China approved amendments to Law of People's Republic of China on Chinese and Foreign Equity Joint Ventures, Law of People's Republic of China on Chinese and Foreign Contractual Co-operative Enterprise and Law of People's Republic of China on Foreign-Capital Enterprises, respectively. These three laws are the pillars of Chinese FDI laws and their amendments were mainly based on the proposals from MOFTEC. In accordance with the three amendments, the relevant implementation regulations and rules of FDI laws were also updated correspondingly. The most notable changes of these laws are the elimination of provisions demanding for foreign exchange balance, local contents and export performance, which were inconsistent with TRIMs agreement.

Another favourite news is the recent promulgation of Industrial Guidance of Foreign Investment in China and Automobile Industry Policy, which I believe provides valuable opportunities to foreign capitals.

The above-mentioned legislative amendments gear China's FDI legal system to WTO rules and materialise the commitments of Chinese government.

3. Laws and regulations on Intellectual Property Rights

The protection of intellectual property rights is a consistent policy of Chinese government. In accordance with the TRIPs agreements and China's commitments of WTO entry, the pillar laws and regulations concerning IPR protection were revised, such as Trademark Law, Copyright Law, Patent Law, Implementation rules of Patent Law and Regulation on Computer Software Protection. Furthermore, new regulations, including Regulation on Integrate Circuit Typography Protection and Regulation on New Foliage Variety Protection, were approved in the past years to expand the range of IPR protections. These regulations, together with the established ones, show us a new picture of IPRs protection and make our IPRs system consistent with TRIPs requirements.

Note-worthily, our government reinforces the implementation of IPRs laws and regulations to maintain a fair and competitive domestic market.

4. Regulations concerning trade in services

MOFTEC, along with other competent authorities in various sectors, made dramatic efforts to amend and formulate regulations regarding market access and ministerial rules thereof. Taking the general principles of GATS and our commitments of WTO accession into consideration, we amended and enacted a series of regulations on domestic market openness.

Following are some important regulations coming into effect recently:

1. Regulation on the representative office of foreign law firm in China;
2. Amendment to Regulation on the financial institutions with foreign capital;
3. Regulation on the insurance institutions with foreign capital;
4. Amendment to Regulation on audio and video products;
5. Amendment to Regulation on Movies;
6. Amendment to Regulation on tourism service institutes;

7. Regulations on foreign investment in telecom enterprises;
8. Provisional rule on Sino-foreign joint venture and co-operative medical institutions;
9. Regulations on international sea transportation.

Furthermore, regulations on Sino-foreign joint venture Securities Company and on the Business Qualification of Foreign Trade are in process of formulation. Besides the above mentioned amendment and formulations of laws and regulations on foreign trade, foreign investment, intellectual property right and trade in service, MOFTEC is carefully engaged in research on the amendment of "PRC Foreign Trade Law" in according to the commitments that China has made.

Part III The clearance of regional regulations and rules in China

At present, the clearance of national laws, regulations and ministerial rules has almost been completed and the amendment and formulation are proceeding. As a special work, the clearance at national level will be finished by June this year. Now, the key legal task of MOFTEC this year is to boost the finish of clearance movement of regional regulations and rules on foreign trade and economic Cupertino, and reinforce the instruction of and supervision over the local work. In addition, MOFTEC will enhance the advocating and training of WTO rules and international practices. Such work is an integral part of legal compatibility with WTO rules and, undoubtedly, will contribute to the establishment of a uniform and transparent legal system on foreign trade in the whole country.

Conclusion

Laws and regulations at both national and regional levels are the foundation of China's foreign trade and economic Cupertino system. The ongoing legal reform movement is just a part of the whole project. With the development of national economy, China will gradually establish a uniform, reasonable and transparent legal system pursuant to WTO agreements. China is a responsible player in international arena. We Chinese have the capacity to realise our commitments to other WTO members, cultivate fair trade environment and thus boost the liberalisation of world trade in turns.

With the completion of the amendment and formulation of laws and regulations and the further proceedings of "rule of law" in respect of foreign trade and economic Cupertino, the approach of Chinese government's administration will take on a new look. Confidence on the environment of China's foreign trade and investment will be improved considerably.

Thank you for attention.