Regulations on the Administration of Technology Import and Export of the PRC

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Foreign Trade Law of the People's Republic of China and other relevant laws for the purposes of regulating the administration of technology import and export, safeguarding national security and public interests, and promoting the development of foreign trade and economic cooperation.

Article 2 — For the purposes of these Regulations, "technology import and export" means the transfer of technology from outside the territory of the People's Republic of China into the territory, or from within the territory to outside the territory, by means of trade, investment, or economic and technical cooperation. Such acts include the transfer or licensing of patent rights, patent application rights, technical secrets, and the provision of technical services.

Article 3 — The state shall implement a uniform administration system for technology import and export and shall maintain a fair and free technology import and export trade order in accordance with the law.

Article 4 — Technology import and export shall comply with the state's industrial policies, science and technology policies, and social development polices, and shall be conducive to promoting the advancement

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of science and technology and foreign economic and technological cooperation in China, and shall be conducive to safeguarding the state's economic and technological rights and interests.

Article 5 — The state shall permit the free import and export of technologies, except as otherwise provided by laws and administrative regulations.

Article 6 — The administrative authority in charge of foreign trade and economic cooperation under the State Council shall be responsible for the administration of technology import and export nationwide in accordance with the provisions of these Regulations. The administrative authorities in charge of foreign trade and economic cooperation under the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government shall be responsible for the administration of technology import and export within their respective administrative areas in accordance with the provisions of these Regulations.

Chapter II — Administration of Technology Import

Article 7 — The state encourages the import of advanced and applicable technologies. The state shall restrict or prohibit the import of technologies that are detrimental to national security or public interest, or that may cause harm to human health or safety, or that may damage the ecological environment.

Article 8 — Import of technologies that are restricted shall be subject to licensing administration. Import of technologies that are not restricted shall be subject to contract registration administration. Technologies the import of which is prohibited shall not be imported.

Article 9 — To import technologies that are restricted, an application shall be made to the administrative authority in charge of foreign trade and economic cooperation under the State Council for a technology import license. The administrative authority in charge of foreign trade and economic cooperation under the State Council shall, together with the relevant authorities, examine the application and make a decision within 30 working days from the date of receipt.

Article 10 — Where an application for technology import license is approved, the administrative authority in charge of foreign trade and economic cooperation under the State Council shall issue a letter of intent for the technology import license. The technology importer may, on the strength of the letter of intent, enter into a technology import contract with the foreign party.

Article 11 — After concluding a technology import contract, the importer shall submit the contract and the letter of intent for the technology import license to the administrative authority in charge of foreign trade and economic cooperation under the State Council for examination. The administrative authority shall make a decision on the issuance of the license within 15 working days.

Article 12 — For the import of freely importable technologies, the contract shall be registered with the administrative authority in charge of foreign trade and economic cooperation under the State Council or its authorized agency, and a technology import contract registration certificate shall be obtained.

Article 13 — Where the content of a technology import contract needs to be modified, the modification shall be handled in accordance with the prescribed procedures.

Article 14 — In a technology import contract, the transferor shall not compel the transferee to accept unreasonable restrictive conditions. Without approval, the contract shall not contain restrictive clauses that:

Article 14.1 — Require the transferee to accept additional conditions that are not indispensable to the technology import, including the purchase of unnecessary technology, raw materials, products, equipment, or services;

Article 14.2 — Restrict the transferee from freely purchasing raw materials, parts, products, or equipment from different sources;

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Article 14.3 — Restrict the transferee from improving the imported technology, or restrict the transferee from using the improved technology;

Article 14.4 — Restrict the production scale, product variety, or sales price of products manufactured using the imported technology;

Article 14.5 — Unreasonably restrict the sales channels or export markets of products manufactured using the imported technology;

Article 14.6 — Prohibit the transferee from continuing to use the imported technology after the expiration of the contract;

Article 14.7 — Require the transferee to pay a fee for or bear the obligation under a patent that has expired or has been declared invalid.

Article 15 — The term of validity of a technology import contract shall be appropriate to the time needed for the transferee to master the imported technology. Without approval, the term shall not exceed 10 years.

Article 16 — The transferor in a technology import contract shall guarantee that it is the lawful owner of the technology provided or that it has the right to transfer or license the technology. Where a transferee is accused of infringement by a third party for using the technology provided by the transferor, the transferor shall be liable.

Article 17 — The transferor and the transferee in a technology import contract shall agree on the scope of confidentiality obligations with respect to the technical secrets involved in the technology provided by the transferor. The period of the confidentiality obligation shall not exceed the term of validity of the contract.

Article 18 — After the term of a technology import contract expires, the transferee may continue to use the technology, unless otherwise agreed by both parties.

Article 19 — Within the term of validity of the technology import contract, the ownership of the improved technology shall belong to the party that made the improvement.

Chapter III — Administration of Technology Export

Article 20 — The state shall restrict or prohibit the export of technologies that:

Article 20.1 — Endanger national security or public interest;

Article 20.2 — Involve the protection of exhaustible domestic resources or the ecological environment;

Article 20.3 — Are subject to international obligations undertaken by the state;

Article 20.4 — Are significant technologies in key industries that the state supports for development and whose export would seriously affect the international competitiveness of related industries;

Article 20.5 — Are other technologies as provided by laws and administrative regulations.

Article 21 — Export of technologies that are restricted shall be subject to licensing administration. Export of technologies that are not restricted shall be subject to contract registration administration. Technologies the export of which is prohibited shall not be exported.

Article 22 — To export technologies that are restricted, an application shall be made to the administrative authority in charge of foreign trade and economic cooperation under the State Council for a technology export license. The administrative authority shall, together with the relevant authorities, examine the application and make a decision within 30 working days from the date of receipt.

Article 23 — Where an application for a technology export license is approved, the administrative authority shall issue a letter of intent for the technology export license. The technology exporter may, on the strength of the letter of intent, carry out substantive negotiations and conclude a technology export contract with the

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foreign party.

Article 24 — After concluding a technology export contract, the exporter shall submit the contract and relevant documents to the administrative authority in charge of foreign trade and economic cooperation under the State Council for examination. The administrative authority shall make a decision on the issuance of the license within 15 working days.

Article 25 — For the export of freely exportable technologies, the contract shall be registered with the administrative authority in charge of foreign trade and economic cooperation under the State Council or its authorized agency, and a technology export contract registration certificate shall be obtained.

Chapter IV — Legal Liability

Article 26 — Where a technology is imported or exported without obtaining a technology import or export license, the administrative authority in charge of foreign trade and economic cooperation shall impose penalties in accordance with the relevant provisions of the state.

Article 27 — Where a technology import or export contract is modified without authorization, or where a technology import or export license is altered, assigned, or used fraudulently, the administrative authority in charge of foreign trade and economic cooperation shall revoke the technology import or export license and impose penalties in accordance with the law.

Article 28 — Where the provisions of these Regulations are violated by importing or exporting technologies the import or export of which is prohibited, criminal liability shall be pursued in accordance with the relevant provisions of the Criminal Law on the crime of smuggling. Where a crime is not constituted, penalties shall be imposed in accordance with the relevant provisions of customs law and regulations.

Chapter V — Supplementary Provisions

Article 29 — The technology catalogues for import and export administration shall be formulated, adjusted, and published by the administrative authority in charge of foreign trade and economic cooperation under the State Council together with the relevant authorities of the State Council.

Article 30 — The administration of technology import and export related to military equipment, dual-use items, and nuclear exports shall be governed by the relevant separate provisions of the state.

Article 31 — These Regulations shall take effect on January 1, 2002. The Regulations on the Administration of Technology Import Contracts of the People's Republic of China promulgated by the State Council on May 24, 1985, and the Measures on the Administration of Technology Introduction Contracts and the approval procedures therefor promulgated by the State Council on January 21, 1988, shall be repealed simultaneously.

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