

国际法资料

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中国国际法学会、外交学院国际法研究所 编辑

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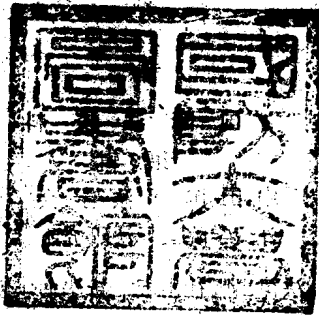


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主编 徐小冰

国内立法

鼓励外商投资法规汇编(二)

I. 对外经济贸易部关于外商投资企业购买国内产品出口解决外汇收支平衡的办法

(1987年1月20日)

第一条 根据国务院有关规定,为帮助外商投资企业求得外汇收支平衡,经申请批准,允许购买国内产品出口以弥补本企业的外汇缺额,特制订本办法。

第二条 外商投资企业原则上应通过出口本企业的产品,达到外汇收支平衡。对于暂时存在困难的外商投资的生产性企业,可以在一定期限内申请购买国内产品(国家规定统一经营的商品除外)出口,以解决本企业的外汇收支平衡。

第三条 凡符合本办法第二条规定的外商投资企业,如需要购买国内产品出口解决外汇收支平衡的,应事先向企业所在地的省级对外经济贸易部门提出申请,说明当年需要购买国内产品出口弥补所需的外汇额度和相应的人民币金额、申请购买国内产品的名称、规格和数量、出口渠道等。

第四条 外商投资企业经批准购买国内产品出口的数量,仅限于弥补企业当年生产经营所需要的外汇和中方投资者汇出分得的利润,或企业结业清算所需汇出的外汇。

第五条 外商投资企业经批准购买国内产品出口解决外汇收支平衡,主要应在企业所在的省、自治区、直辖市购买产品;如需跨省采购,应事前征得产地省级对外经济贸易部门同意。

第六条 外商投资企业经批准购买用于解决外汇收支平衡的国内产品,必须运往中国境外销售,不准在中国境内倒卖。

第七条 外商投资企业经批准购买用于解决外汇收支平衡的国内产品,本企业可以自行出口,也可以委托中国外贸公司代理出口。

第八条 除经批准由外商投资企业购买国内产品出口外,各省、自治区、直辖市、计划单列市(区)人民政府,在保证完成国家出口计划的前提下,可以通过有经营权的外贸公司组织本地区的产品出口,由此按照国家外汇留成规定所得的外汇额度,以规定比例给供货单位外,其余额,可以在当地外汇管理部门监管下,由地方人民政府专项用于调剂解决外商投资企业的外汇收支平衡。

第九条 本办法第三条规定的外商投资企业申请购买国内产品出口和第八条规定由省、自治区、直辖市、计划单列市(区)人民政府组织出口的产品,凡属于国家实行出口许可证管理的商品和国内有出口配额的商品,应报对外经济贸易部批准。其他商品由省级对外经济贸易部门批准,报对外经济贸易部备案。

上述审批部门应在收到申请之日起一个月内给予批复。经批准出口的产品,凡属于实行许可证的商品,应按照《对外经济贸易部关于外商投资企业申领进出口许可证办法》办理出口许可证手续。

第十条 本办法自公布之日起施行。

(英译文)

MEASURES OF THE MINISTRY OF FOREIGN
ECONOMIC RELATIONS AND TRADE CONCERN
ING THE PURCHASE OF DOMESTIC PRODUCTS
FOR EXPORT BY ENTERPRISES WITH FOREIGN
INVESTMENT TO BALANCE FOREIGN
EXCHANGE RECEIPTS AND DISBURSEMENTS

(Promulgated on January 20, 1978)

Article 1. These Measures are specially formulated in accordance with the relevant stipulations of the State Council for the purpose of assisting Enterprises with Foreign Investment to achieve a balance of foreign exchange receipts and disbursements, which, upon the approval of their applications, shall be allowed to purchase domestic products for export in order to make up the foreign exchange deficiency of such enterprises.

Article 2. In principle, Enterprises with Foreign Investment shall achieve a balance of foreign exchange receipts and disbursements through the export of products of such enterprises. With regard to production enterprises with foreign investment for which temporary difficulties exist, they may, within a fixed period of time, apply to purchase domestic products (except commodities subjected to unified operation according to State stipulations) for export so as to balance the foreign exchange receipts and disbursements of such enterprises.

Article 3. If any Enterprise with Foreign Investment meeting the requirements of Article 2 herein needs to purchase domestic products for export to balance foreign exchange receipts and disbursements, it shall file an application in advance with the foreign economic relations and trade department at the provincial level in the locality where the enterprise is located, stating the amount of foreign exchange

and the corresponding amount of Renminbi required for that year to be made up by purchasing domestic products for export, and the names, specifications and quantities, as well as the export channels, etc. of domestic products for which purchase is applied.

Article 4. The quantity of domestic products for export approved to be purchased by an Enterprise with Foreign Investment shall be limited to the amount required in that year to make up for the foreign exchange required for the production and operation of the enterprise and the remittance of profits shared by the investors of the foreign party, or the foreign exchange required to be remitted upon the winding up and liquidation of the enterprise.

Article 5. An Enterprise with Foreign Investment approved to purchase domestic products for export to balance foreign exchange receipts and disbursements shall mainly purchase products in the province, autonomous region or municipality directly under the Central Government where the enterprise is located. If purchasing in other provinces is required, prior approval from the foreign economic relations and trade department at the provincial level in the place of production shall be obtained.

Article 6. Domestic products approved to be purchased by an Enterprise with Foreign Investment to balance foreign exchange receipts and disbursements must be transported out of the Chinese territory for distribution and sale and shall not be allowed to be resold within the Chinese territory.

Article 7. Domestic products approved to be purchased by an Enterprise with Foreign Investment to balance foreign exchange receipts and disbursements may be exported by such enterprise on its own or may be entrusted to China's foreign trade companies acting as agents for the export.

Article 8. Apart from Enterprises with Foreign Investment purchasing domestic products for export upon approval, the people's governments of various provinces, autonomous regions, municipalities directly under the Central Government and municipalities (districts) listed for planning may, on the premise of ensuring the fulfillment of

the export plan of the State, organize the export of products of one's own district through the foreign trade companies that have the right of operation. The amount of foreign exchange obtained thereby in accordance with the State stipulations on foreign exchange retention shall be given to the supplier units according to specified proportions, the remaining amounes thereof may be used by the local people's government, under the supervision of the local foreign exchange administrative department, specifically for adjusting and resolving the balance of foreign exchange receipts and disbursements of Enterprises with Foreign Investment.

Article 9. With respect to the domestic products to be purchased for export through application by Enterprises with Foreign Investment in accordance with Article 3 herein and the products the export of which are to be organized by the people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and municipalities (districts) listed for planning in accordance with Article 8, [the export of] any commodities that come under the control of the State through the implementation of export licensing and commodities with export quotas within China shall be reported to the Ministry of Foreign Economic Relations and Trade for approval; [the export of] other commodities shall be subjected to the approval of the foreign economic relations and trade depts at the provincial level and shall be filed with the Ministry of Foreign Economic Relations and Trade for the record.

The above said examination and approval departments shall give replies within one month from the date of the receipt of the applications. With regard to the products approved for export, export license procedures shall be gone through in accordance with the "Implementation Measures of the Ministry of Foreign Economic Relations and Trade Concerning the Application of Import and Export Licenses by Enterprises with Foreign Investment" for any commodities for which licenses are required.

Article 10. These Measures shall come into force as of the date of promulgation.

II. 对外经济贸易部关于外商 投资企业申领进出口许可证的实施办法

(1987 年 1 月 24 日)

第一条 为了简化办理进出口许可证手续,便于外商投资企业开展业务。根据《中华人民共和国中外合资经营企业法实施条例》和《国务院关于鼓励外商投资的规定》,特制定本办法。

第二条 外商投资企业外国投资者作为投资而进口的设备和物料,属于实行进口许可证管理的商品,凭批准的该企业的进口设备和物料清单,领取进口许可证;不属于实行进口许可证管理的商品,海关凭原批准该企业的进口设备、物料清单验放。

第三条 外商投资企业为生产出口产品所需进口(包括实行进口许可证管理的)机械设备、生产用车辆(指运输用货车、特种车和客货两用车)、原材料、燃料、散件、零部件、元器件、配套件,免领进口许可证,由海关实行监管,凭批准成立企业的文件、合同或进出口合同验放。上述进口机械设备、生产用车辆、料、件,只限本企业生产自用,不得在国内转让出售;其进口料、件或用进口料、件所生产的产品,因特殊情况转为内销,应按本办法第四条规定补办进口手续。

第四条 外商投资企业在批准的经营范围內,为生产内销产品和国内经营业务所需进口的机械设备、生产用车辆、原材料、燃料、散件、零部件、元器件、配套件,其中属于实行进口许可证管理的商品,凭确认的企业进口计划,每半年申领一次进口许可证;不属于实行进口许可证管理的商品,海关凭批准成立企业的文件、合

同验放。

第五条 外商投资企业进口本企业自用的、数量合理的非生产物品,其中属于实行进口许可证管理的商品,由省级对外经济贸易部门核发进口许可证。

第六条 外商投资企业出口本企业生产的产品,其中属于实行出口许可证管理的商品,凭企业年度出口计划每半年申领一次出口许可证。

第七条 外商投资企业在本企业经营范围内出口本企业生产的、不属于出口许可证管理的商品,海关凭出口合同等有关证件验放。

第八条 外商投资企业经批准为解决外汇收支平衡,出口非本企业生产的产品,凡属于实行出口许可证的商品,凭批准文件申领出口许可证;不属于出口许可证管理的商品,海关凭出口合同等有关证件验放。

第九条 外商投资企业申领进出口许可证,均按对外经济贸易部公布的分级管理发证的品种,分别向有关发证机关申请办理。

第十条 本办法自公布之日起施行。

(英文译文)

IMPLEMENTATION MEASURES OF THE MINISTRY OF FOREIGN ECONOMIC RELATIONS AND TRADE CONCERNING THE APPLICATION FOR IMPORT AND EXPORT LICENSES BY ENTERPRISES WITH FOREIGN INVESTMENT

(Promulgated on January 24, 1987)

Article 1. These Measures are specially formulated pursuant to the "Regulations of the People's Republic of China for the Implementation of the Law on Joint Ventures Using Chinese and Foreign Investment" and the "Provisions of the State Council For the Encouragement of Foreign Investment" in order to simplify the handling of procedures for import and export licenses and facilitate the business development of Enterprises with Foreign Investment.

Article 2. With respect to equipment and supplies imported as investment by Foreign Investors in an Enterprise with Foreign Investment, import licenses shall be obtained for commodities that come under control through the implementation of import licensing on the strength of the approved list of imported equipment and supplies of such enterprise, commodities that do not come under control through the implementation of import licensing shall be examined and released by Customs on the strength of the original approved list of imported equipment and supplies of such enterprise.

Article 3. Import licenses will not have to be obtained for the import of machinery and equipment, vehicles used in production (meaning trucks used for transportation, special vehicles and passenger-cargo vans), raw materials, fuel, bulk parts, spare parts, components and parts of apparatuses and necessary accessory parts (including those that come under control through the implementation

of import licensing) required by Enterprises with Foreign Investment for the production of export products. Customs shall exercise supervision and control and shall examine and release such imports on the strength of the document approving the establishment of the enterprise, contract or the import/export contract. The above-mentioned imported machinery and equipment, vehicles used in production, materials and parts shall be restricted to use by the enterprise itself in production and may not be transferred and sold domestically. If the imported materials, parts or products produced by using such imported materials or parts are sold domestically due to special circumstances, import procedures shall be gone through retroactively in accordance with Article 4 of these Measures.

Article 4. With respect to machinery and equipment, vehicles used in production, raw materials, fuel, bulk parts, spare parts, components and parts of apparatuses and necessary accessory parts required to be imported by an Enterprise with Foreign Investment within the approved scope of operation for the production of products to be sold domestically and for the operation of business domestically, those that fall within the category of commodities under control through the implementation of import licensing shall require import licenses which shall be applied for and obtained once every six months on the strength of the confirmed import plan of the enterprise, those that do not fall within the category of commodities under control through the implementation of import licensing shall be examined and released by Customs on the strength of the document approving the establishment of the enterprise or the contract.

Article 5. Among the non-production articles imported by an Enterprise with Foreign Investment for its own use and in reasonable quantities, those that fall within the category of commodities under control through the implementation of import licensing shall be examined and issued with an import license by the foreign economic relations and trade department at the provincial level.

Article 6. Export licenses shall be applied for and obtained once every six months for any product produced and to be exported by

an Enterprise with Foreign Investment that falls within the category of commodities under control through the implementation of export licensing on the strength of the annual export plan of the enterprise.

Article 7. Commodities produced and exported by an Enterprise with Foreign Investment within the scope of operation of such enterprise that are not subject to the control of export licensing shall be examined and released by Customs on the strength of the export contract and other relevant certifying documents.

Article 8. With respect to products which are not produced but are to be exported by an Enterprise with Foreign Investment, with approval, in order to balance foreign exchange receipts and disbursements, export licenses shall be applied and obtained for those commodities that are subject to the implementation of export licensing on the strength of the approval documents; commodities that are not subject to the control of export licensing shall be examined and released by Customs on the strength of the export contract and other relevant certifying documents.

Article 9. When applying to obtain import and export licenses, an Enterprise with Foreign Investment shall, according to the categories published by The Ministry of Foreign Economic Relations and Trade for the control of license issuance by different levels, apply and proceed with the relevant license issuing authorities respectively.

Article 10. These Measures shall come into force as of the date of promulgation.

III. 对外经济贸易部关于 确认和考核外商投资的产品出口 企业和先进技术企业的实施办法

(1987年1月27日)

根据《国务院关于鼓励外商投资的规定》(以下简称《规定》),为确认和考核外商投资的产品出口企业和先进技术企业,特制定本办法。

第一条 在中国境内依法批准设立的中外合资经营企业、中外合作经营企业和外资企业,凡符合《规定》第二条的产品出口企业和先进技术企业,经确认和考核领取证明后,都可享受《规定》中的有关优惠待遇。

第二条 凡同时具备下列三个条件的外商投资企业,可确认为产品出口企业:

- 一、外商投资企业必须是生产出口产品的企业;
- 二、产品主要用于出口(包括企业自行出口,委托外贸公司代理出口及其它方式出口),年出口产品的产值达到当年全部产品的产值总额 50% 以上;
- 三、当年实现营业外汇收支平衡或有盈余(计算公式为:年末外汇收支余额=上年结转余额+本年实现营业外汇收入-本年营业外汇支出)。

第三条 符合第二条规定的产品出口企业,凡当年出口产品的产值达到企业全部产品的产值总额 70% 以上的,经年度考核合格后,可按《规定》的第八条享受优惠待遇。