

2011

QUICK REFERENCE TO

THE TRADE AND CUSTOMS LAW OF CHINA

PwC Worldtrade Management Services (Shanghai)



Wolters Kluwer
Law & Business



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Introduction

This book aims at offering an easy guide and quick reference to the trade and customs law of China. It is a reference manual for corporate counsel, corporate executives as well as other professionals with a 'need to know'.

The scope of the guide and reference are more focused on trade in goods, and thereby trade in services is rarely mentioned. There are twelve chapters in this book.

Chapter 1, 'Overview of China Customs and Trade Laws', introduces the hierarchy of the law and the history of customs and trade law, customs and trade law per se, the impact of the World Trade Organization and World Customs Organization on the China customs and trade law, and the process of developing and issuing law.

Chapter 2, 'Administration of Customs and Trade Laws', provides information on the main responsibilities of such authorities as General Administration of Customs, Ministry of Commerce, General Administration of Quality Supervision, Inspection and Quarantine, etc.

Following Chapters 1 and 2, the general import and export procedures are introduced in Chapter 3. In addition to discussing documents, import/export licensing, commodity inspection, and customs duty, Chapter 3 introduces some Chinese-specific topics, for example importer/exporter of record, customs broker, enterprise classification system, foreign exchange controls for trade payables/receivables and export VAT refund.

Chapters 4, 5 and 6 provide an introduction on 'tariff classification of goods', 'customs valuation of goods' and 'country of origin'. Chapter 7 navigates the China's free trade agreements with other countries.

Processing Trade (bonded manufacturing) is introduced in Chapter 8. In this Chapter, various concepts are introduced, such as contract manufacturing, toll manufacturing, full/semi-bonded operating model, customs handbook, and bonded transfer.

In Chapter 9, Bonded Logistics Centre, Bonded Logistics Park, Bonded Port Area, Bonded Warehouse, Export Bonded Warehouse, Export Processing Zone, Free Trade Zone, Integrated Bonded Zone are introduced and compared.

Chapters 10 and 11 provide readers with an overview of duty exemption and reduction policy. Among others, Chapter 10 introduces the Duty-Exempt Capital Equipment and Chapter 11 introduces other situations where duty exemption or reduction can be applied, such as repair goods, leasing trade, duty-free goods, sale by consignment, temporary import/ export goods, exhibition goods, samples/ advertisement, free exchange, donation goods, and direct return cargo.

Chapter 12, 'Audits and Investigations', introduces the law and practice in relation to customs audits and investigations and financial penalties. Voluntary disclosures and administrative and legal remedies are also mentioned in this chapter.

Last but not the least, Chapter 13, 'Import and Export Controls', introduces the law and practice in relation to non-proliferation processes, controls over nuclear, biological, chemical, missile and other sensitive items and technologies as well as military products. This Chapter covers control lists, licensing management system, end-user/end-use certification, and the 'catch all' provision.

In addition to the legal provisions, certain practical challenges in some areas are introduced in the chapters as well for the information of the readers.

About the Authors

About PricewaterhouseCoopers – China, Hong Kong, Singapore and Taiwan

PwC China, Hong Kong, Singapore and Taiwan work together on a collaborative basis, subject to local applicable laws. Collectively, we have more than 580 partners and a strength of 14,000 people.

Providing organizations with the advice they need, wherever they may be located, our highly qualified, experienced professionals listen to different points of view to help organizations solve their business issues and identify and maximize the opportunities they seek. Our industry specialization allows us to help co-create solutions with our clients for their sector of interest.

We are located in these cities: Beijing, Hong Kong, Shanghai, Singapore, Taipei, Chongqing, Chungli, Dalian, Guangzhou, Hsinchu, Kaohsiung, Macau, Ningbo, Qingdao, Shenzhen, Suzhou, Taichung, Tainan, Tianjin, Xiamen and Xi'an.

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Mr Paling's China experience is spread across Northern, Central and Southern China and includes Processing Trade, customs valuation, tariff classification, free trade agreements, bonded zones (FTZ, BLP, BPA, EPZ, Bonded Warehouses), used capital equipment importation, duty-free capital equipment importation, disposal, sale and transfer of bonded capital equipment, and other duty exemption and reduction policies.

Prior to joining PricewaterhouseCoopers, he was a Customs Officer with the New Zealand Customs Service, based in Auckland. Mr Paling has a Masters in Customs Law and Administration from the University of Canberra in Australia.

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She has both technical knowledge and hands-on experience related to China Customs regulations and customs practices worldwide. She has provided many multinational and Chinese national companies with advice on customs compliance, cross-border business and duty planning, implications of re-structuring, valuation, Processing Trade related affairs, and helped with resolution of disputes with the Customs authorities.

Prior to joining PricewaterhouseCoopers, Ms Ju has worked in the General Administration Customs (GAC) for more than ten years. She has maintained strong relationships and connections with both GAC and local customs offices. Through her long service with PRC Customs, Ms Ju has gained extensive experience in the areas of customs legislation, WTO affairs, foreign investment policy, customs controls, duty collection, Customs risk management, intellectual property rights enforcement, dispute negotiation, as well as foreign exchange control.

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About the Authors

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Prior to joining PwC, he spent five years with Canada Customs performing verification tasks of NAFTA. He was a public accountant and auditor in Toronto, fluent (both written and spoken) in English, Mandarin and Cantonese.

List of Abbreviations

ACFTA – ASEAN China Free Trade Area
AEO – Authorized Economic Operator
AIC – Administration of Industry and Commerce
APTA – Asia-Pacific Trade Agreement,
AQSIQ – Administration of Quality Supervision, Inspection & Quarantine
ASB – Anti-smuggling Bureau
ASEAN – Association of Southeast Asian Nations
ATA – Advanced Technology Attachment
B/L – Bill of lading
BLC – Bonded Logistics Center
BLP – Bonded Logistics Park
BOM – Bill of Materials
BPA – Bonded Port Area
BW – Bonded Warehouse
C&F – Cost & Freight
CCC – China Compulsory Certification
CCIC – China Certification & Inspection Group
CCPIT – China Council for the Promotion of International Trade
CD – Customs Duty
CDF – Customs Declaration Form
CEPA – Closer Economic Partnership Arrangement
CIF – Cost, Insurance and Freight
CIQ – Commodity Inspection and Quarantine
CM – Contract Manufacturing
CNCA – China National Certification and Accreditation
COO – Certificate of Origin
COSTIND – Commission of Science and Technology Industry of National Defense
CPA – Certified Public Accountant
CRO – Cumulative Rule of Origin
CTC – Customs Tariff Commission of the State Council
DIRECON – General Directorate for International Economic Affairs (Chile)
DSE – Direcção dos Serviços de Economia (Macao)
EBW – Export Bonded Warehouse
ECR – Exempt, Credit and Refund
EDI – Electronic Data Interchange
EOR – Exporter of Record
EPCL – Encouraged Project Confirmation Letter
EPZ – Export Processing Zone
ER – Exempt, Refund
ERP – Enterprise Resource Planning
ESCAP – Economic and Social Commission for Asia and the Pacific
FG – Finished Goods
FICEs – Foreign Invested Commercial Enterprises
FIE – Foreign Investment Enterprise
FOB – Free-on-board
Forex – Foreign Exchange
FTA – Free Trade Agreement
FTZ – Free Trade Zone
GAC – General Administration of Customs
GATT – General Agreement of Tariffs and Trade

List of Abbreviations

GCC – Gulf Cooperation Council
GRI – General Rules of Interpretation
HK – Hong Kong
HS – Harmonized System
I/E – import /export
IBZ – Integrated Bonded Zone
ICC China – International Chamber of Commerce China
IEC – International Electrotechnical Commission
IOR – Importer of Record
IPR – Intellectual Property Rights
ISO – International Organization for Standardization
LDCs – least developed countries
MFN – Most-Favoured Nation
MOA – Ministry of Agriculture
MOF – Ministry of Finance
MOFCOM – Ministry of Commerce
N/A – Not applicable
NDRC – National Development and Reform Commission
NPC – National People’s Congress
OEM – Original Equipment Manufacturing
OPA – Office of Price Administration (Macao)
PO – Purchase Order
PRC – People’s Republic of China
R&D – Research & Development
RKC – Revised Kyoto Convention
RM – raw materials
RMB – Renminbi, Chinese currency
RTV – Return to Vendor
RVC – Regional Value Content
SAC – Standardization Administration of the PRC
SACU – Southern African Customs Union
SAFE – Administration of Foreign Exchange
SAFE IC card – Foreign Exchange Registration Certificate in Bonded Areas
SAT – State Administration of Taxation
SFDA – State Food and Drug Administration
TC – Total Consumption
THC – Terminal Handling Charges
TID – Trade and Industry Department (Hong Kong)
TM – Toll Manufacturing
TRIPs – Trade-Related Intellectual Property Rights
USD – US Dollar, American currency
VAT – Value added tax
WCO – World Customs Organization
WOFE – Wholly Owned Foreign Enterprises
WTO – World Trade Organization
3PL – 3rd-party Logistics Provider

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CHAPTER 1

OVERVIEW OF CHINA CUSTOMS AND TRADE LAWS

Introduction This chapter introduces the history, content and development of the customs and trade laws in China.

In this chapter This chapter has six sections:

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A. Hierarchy of Law and History of Customs and Trade Law

Hierarchy of law in China

Prior to introducing the history of China customs and trade law, we will brief the hierarchy of law in China.

1. Law

Law in China is legislated, amended and adopted by the National People's Congress (NPC) or its Standing Committee, signed by the President and interpreted by the NPC's Standing Committee.¹ The Law in China is also subordinated to the constitution law enacted in China. The scope of validity covers all territories of China. Under the legal framework of China customs and trade law, the Customs Law of the People's Republic of China (PRC)² and the Foreign Trade Law of the PRC³ are two of the most fundamental laws. The Import and Export Commodity Inspection Law of the PRC⁴ is another related law.

2. National Regulations

National regulations are made by the State Council and signed by the Premier of the State Council.⁵ National regulations are subordinated to law and constitution. Under the legal framework of China customs and trade law national regulations include, but are not limited to, the following legal documents related to customs and trade affairs:

- a. Ordinance of Customs Warranty Practice for People's Republic of China, State Council Order [2010] No. 581.
- b. Regulation of the People's Republic of China on Foreign Exchange Administration, State Council Order [2008] No. 532.
- c. Regulation of the People's Republic of China on the Administration of the Import and Export of Endangered Species of Wild Fauna and Flora, State Council Order [2006] No. 465.
- d. Implementation Regulation for People's Republic of China Import and Export Commodity Inspection Laws, State Council Order [2005] No. 447.

1 Articles 7, 23, 41 and 42, Law of Legislation of People's Republic of China, adopted by the NPC on 15 Mar. 2000, President Order [2000] No. 31.

2 Customs Law of People's Republic of China, amended by the Standing Committee of the NPC on 8 Jul. 2000, President Order [2000] No. 35.

3 Foreign Trade Law of People's Republic of China, amended by the Standing Committee of the NPC on 6 Apr. 2004, President Order [2004] No. 15.

4 Import and Export Commodity Inspection Law of People's Republic of China, amended by the Standing Committee of the NPC on 28 Apr. 2002, President Order [2002] No. 67.

5 Article 56, Legislation Law, President Order [2000] No. 31.

- e. Implementation Regulation of the People's Republic of China on Customs Administrative Punishment, State Council Order [2004] No. 420.
- f. Regulation of the People's Republic of China on Rules of Origin of Imports and Exports, State Council Order [2004] No. 416.
- g. Regulation of the People's Republic of China on Import and Export Duties, State Council Order [2003] No. 392.
- h. Regulation of the People's Republic of China on Administration of the Import and Export of Goods, State Council Order [2001] No. 322.
- i. Regulations of the People's Republic of China on Customs Audit and Investigation, State Council Order [1997] No. 209.

3. Administrative Rules

At a national level, there is another set of legal pronouncements, namely administrative rules. They are made by the ministries, commissions or other organizations directly under the State Council, and are signed by ministers of the ministries, commissions or other organizations directly under the State Council. Accordingly, the administrative rules are inferior to national regulations made by the State Council. The following rules in relation to customs and trade law are some examples of administrative rules:

- a. Administrative Measures for Country of Origin of Import and Export Goods under Economic Cooperation Framework Agreement of P.R.C. Customs, GAC Order [2010] No. 200.
- b. Administration Measure on Classification of Enterprises, GAC Order [2010] No. 197.
- c. The Decision for Revision of <Supervision Measures of P.R.C. Customs on Processing Trade, GAC Order [2010] No. 195.
- d. Administrative Measures for CCC, AQSIQ Order [2009] No. 117.
- e. Administrative Measures for the Export License of Goods, MOFCOM Order [2008] No. 11.
- f. Administrative Measures for the Import of Electromechanical Products, MOFCOM, GAC, AQSIQ Joint Order [2008] No. 7.
- g. Implementation Measures for the Automatic Import License of Electromechanical Products, MOFCOM, GAC Joint Order [2008] No. 6.
- h. Administrative Measures for the Import of Key Used Electromechanical Products, MOFCOM, GAC, AQSIQ Joint Order [2008] No. 5.
- i. Administrative Measures of Customs on Classification of Import and Export Goods, GAC Order [2007] No. 158.

- j. Administrative Measures for the Automatic Import License of Goods, MOFCOM, GAC Order [2007] No. 26.
- k. Measures of the General Administration of Customs (GAC) of PRC for the Examination and Determination of the Dutiable Value for Imports and Exports, GAC Order [2006] No. 148.
- l. Administrative Measures for the Import and Export of Chemicals Liable to Produce Poison, MOFCOM [2006] No. 7.
- m. Administrative Measure for Registration of Customs Broker Enterprise, GAC Order [2005] No. 127.
- n. Administrative Measures for the Import License of Goods, MOFCOM Order [2004] No. 27.
- o. Implementation Measures for Administrative Reconsideration of the Ministry of Commerce, MOFCOM Order [2004] No. 7.
- p. Administrative Measure for Customs Declaration, GAC Order [2003] No. 103.
- q. Measures of Inspection Exemption for Import/Export Goods, AQSIQ Order [2002] No. 23.

4. Other Legal Documents

In practice, the authorities and organizations under the State Council also issue announcements, circulars, notices and other legal documents, which, in effect, are the supplementary provisions of the administrative rules signed by the heads of the authorities and organizations under the State Council. They are practically deemed as administrative rules. Such legal documents as Ministry of Commerce (MOFCOM) Circular Shangjidianzi [2006] No. 5 in relation to customs and trade is an example of this type of document.

History of customs and trade law

As the Customs Law of the PRC and Foreign Trade Law of the PRC are fundamental within the legal framework of customs and trade law, the two laws legislation history are introduced as follows.

1. Short History of Customs Law⁶

a. Preliminary Period

Since the Decision on Tariff Policy and Customs was issued by the central government in January 1950, the fundamental guideline on construction of Customs was established and the decision to draft customs law and regulations has been made. The first customs law of

6 <<http://lasa.customs.gov.cn/>>.