



PRC Law Newsflash
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**PUBLIC COMMENTS SOLICITED ON DRAFT AMENDMENTS TO THE
REGISTRATION REQUIREMENTS FOR FOREIGN TRADE OPERATORS**

Introduction

On 24 June 2009, the Ministry of Commerce (**MOFCOM**) released for public comment a draft of its *Amendments to the Measures on the Filing and Registration of Foreign Trade Operators* (**Draft Amendments**).

The *Measures on the Filing and Registration of Foreign Trade Operators* (**2004 Measures**), promulgated on 19 June 2004) currently stipulate that foreign trade operators - both domestic and foreign-invested enterprises - wishing to import or export goods or technology for commercial purposes should file and register their operations with the MOFCOM or its designated institutions. The MOFCOM issues successful registrants with a registration certificate. This certificate is routinely required in order to complete subsequent foreign trade registration procedures with the local administrative departments for customs, quality supervision, inspection and quarantine, foreign exchange, and taxation.

The Draft Amendments would supplement the 2004 Measures with detailed stipulations. As such, if they are adopted, foreign trade operators will have a clearer understanding of their registration obligations. This clarification by the MOFCOM is an obvious attempt to encourage and increase compliance with its requirements.

Key Provisions

Renewable two-year term

The most significant change brought about by the Draft Amendments would be the introduction of a renewable two-year term for registration certificates. The 2004 Measures do not specify a registration term: they simply state that a certificate will automatically become null and void if the foreign trade operator fails to:

- (a) complete the procedures required to conduct foreign trade at the local administrative departments for customs, quality supervision, inspection and quarantine, foreign exchange and taxation within 30 days of obtaining the certificate; or
- (b) apply to amend the certificate within 30 days after the occurrence of any changes to the items listed on it.

The Draft Amendments would abolish the 2004 Measures' open-ended term in favor of a standard term of two years from the date on which the MOFCOM affixes its registration seal on the certificate in question. A registration certificate could be renewed prior to its expiry for an additional two-year term.

This standard term corresponds to an extension of the deadline for foreign trade operators to complete related registration procedures with other local administrative departments. Specifically, operators would be obligated under the Draft Measures to complete such ancillary procedures within two years of obtaining their MOFCOM certificates, failing which the certificates would become null and void.

Entrusted Institutions

Under the Draft Measures, the MOFCOM would appoint publicly disclosed institutions to prepare and approve registration certificates on its behalf, by means of a written authorization affixed with the MOFCOM's registration seal.

Affirmative Compliance Requirement

Foreign-invested enterprises (including those enterprises funded by investors in Hong Kong, Macao and Taiwan) that engage in foreign trade activities but have not yet completed filing and registration procedures, would be required by the Draft Measures to comply strictly with the stipulations of PRC foreign trade law and other relevant administrative regulations. This would include submitting data on their import and export activities to the MOFCOM and its entrusted institutions.

Conclusion

The solicitation of public opinion concluded on July 8th, and all comments are now being compiled and analyzed. A recurring critique among the comments called for the MOFCOM and its designated institutions to carefully consider foreign trade operators' histories when approving renewal applications. That is, operators with poor records of compliance with the law should be subject to closer scrutiny when they apply to have their certificates renewed. On the other hand, those operators who have been fully compliant with all customs, quality inspections, quarantine, foreign exchange, and taxation laws and regulations should be able to renew their certificates with ease. Thus, if the Draft Amendments were to be successfully implemented, the rate at which foreign trade operators would willingly comply with the registration procedures would improve significantly.

For further public comments and information, you may visit the MOFCOM website at <http://www.mofcom.gov.cn/au/au.html>.

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