

# China Business Laws and Regulations

中国商法



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# China Business Laws and Regulations

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13485 Old Oak Road  
Saratoga CA 95070 USA  
help@javvin.com  
http://jshop.javvin.com

Editor-In-Chief: Dr. Jielin Dong  
Copy editor: Keke Shi  
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## **Introduction to P. R. China Legal Systems**

### **The Law Formulation of P. R. China**

The development of the legal system of the People's Republic of China (PRC) has experienced a few phases since its establishment in 1949. PRC originally adopted the legal system of the Soviet Union. With the Sino-Soviet conflict in the later 1950s and the Cultural Revolution in late 1960s, all legal work was suspended and the legal system completely collapsed.

In 1978, with the start of the reforms by PRC's prominent leader Deng Xiaoping, the need for reconstructing a legal system was emerging. In 1982, the National People's Congress (NPC) of PRC adopted a new constitution that emphasized the rule of law. Since then, the reconstruction of China's legal system was processed in a "try-and-error" fashion. Typically, temporary or local regulations would be introduced first. After a few years of practice and experiment, the formal regulations and laws would be established for the whole nation. This process of creating a legal infrastructure in piecemeal fashion has led to many situations where the laws are missing, confusing, or contradictory, and has led to judicial decisions having more precedential value than in most civil law jurisdiction. Chinese are working hard to fill the puzzles piece by piece.

In formulate laws, the PRC has been influenced by a number of sources including traditional Chinese views on the role of law, the PRC's socialist background and practicing, the German-based law of the Republic of China prior 1949 and on Taiwan now, and the English-based common law used in Hong Kong. The law of the United States has also been very influential particularly in the areas of intellectual property, banking and securities. Foreign pressures sometimes also play a role during the establishment of the laws in P. R. China. For example, the copyright law of China has been modified and now offers significant protections to foreign copyright owners, which was resulted from many pressures from foreign countries especially the US. As a result, the current legal scheme of the P. R. China seems to be a combination of traditional Chinese culture and the Soviet model, mixed with the characteristics of the civil law family, plus some US flavor.

Starting from 1990s, Chinese government has speed up

its legal reforms to satisfy the need of the rapid integration of China with the rest of the world. In addition to the establishment of laws and regulations, modernizing and professionalizing the nation's lawyers, judges, and prisons have also become the areas of focus. The roles and responsibilities of each legal body have been further clarified and enforced in practice.

### **The Legal Framework**

In China, legal interpretations are commonly grouped into three categories: legislative, administrative, and judicial. The National People's Congress (NPC) and its Standing Committee, which is the highest authority in P. R. China according to its constitution, pass the national statutes, including the Constitution Law, criminal substantial and procedural laws, civil principles and procedural laws, according to the Law of the People's Republic of China on Legislation (2001).

The State Council is empowered to issue and execute administrative regulations in accordance with national laws. Government agencies, ministries and commissions, which are under the State Council, are vested with the power to issue orders, measures, and directives in conformity with the State Council's regulations. Local congressional and government bodies enact local laws and administrative measures. The People's Congress of National Autonomous Regions is empowered to enact autonomous regulations for the region. However, all local laws and regulations cannot be in conflict with national statutes.

The PRC judicial system includes the People's Court and the People's Prosecution. In China, judicial decisions are not considered official sources of law. The judgments of the higher courts and the Supreme People's Court are, however, factually respected by the lower courts and used as guidelines when the provision of law is in obscurity.

The legal systems of the Hong Kong Special Administrative Region (HKSAR) and the Macao Special Administrative Region (Macao SAR), however, are the exceptions from the legal framework of the PRC. After the transfers of sovereignty, Hong Kong and Macao continue to practice English Common Law and Portuguese legal systems

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## ***Introduction***

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respectively, with their courts of final appeal. In other words, Hong Kong and Macao are outside of the legal jurisdiction of the People's Republic of China, except on constitutional issues. The two Basic Laws of the HK-SAR and Macao SAR are national laws, not local laws as approved by the NPC of China. As such, no other laws, ordinances, administrative regulations, and normative documents of the HK SAR and the Macao SAR shall violate their Basic Laws.

We expect to see rapid changes and developments in the PRC legal systems in the coming decades. We will keep you updated timely.

## **Foreigners Doing Business With and Within China**

In the early days after the reforms and open-door policy started in 1978, foreigners have been treated very special in China. Over the years, P.R. China has established a set of special laws and regulations to govern the behavior of foreigners and foreign enterprises for their trade, investment, and other business practices in China and with Chinese entities. Some of the laws and regulations set special favored conditions while other may post restrictions, on foreign individuals and enterprises. As of today, though many special laws and regulations solely designed for foreign entities have been phasing out gradually, there are still quite many remaining. The laws established recently have included foreign entities as part of the framework without a separate document.

This book is designed for foreigners who are doing business or interested to do business with or within China. It is also a comprehensive reference for anyone interested in China's legal systems. We have carefully selected the latest laws and regulations related to foreign entities doing business within China as well as foreigners doing business with Chinese entities. The categories of such laws and regulation include:

- Corporate and Investment Laws and Regulations
- Contract Laws and Regulations
- Import, Export and Commerce Laws and Regulations
- Taxation Laws and Regulations
- Intellectual Property Laws and Regulations
- Labor Laws and Regulations
- Consumer Protection and Product Liability
- Other Related Laws and Regulations

The Chinese versions of the laws and regulations are the original official documents and the English version of the laws and regulations are based on the official government translations of the documents.

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## Foreign Trade Law of The People's Republic of China

2004.04.06

### Chapter I General Provisions

#### Article 1

This Law is formulated with a view to expanding the opening to the outside world, developing foreign trade, maintaining foreign trade order, protecting the legitimate rights and interests of foreign trade dealers and promoting the sound development of the socialist market economy.

#### Article 2

This Law applies to foreign trade and the protection of trade-related aspects of intellectual property rights. For the purposes of this Law, "foreign trade" refers to import and export of goods and technologies and the international trade in services.

#### Article 3

The authority responsible for foreign trade under the State Council is in charge of the administration of the foreign trade of the entire country pursuant to this Law.

#### Article 4

The State shall pursue a uniform foreign trade regime, encourage the development of foreign trade and maintain fair and free foreign trade order.

#### Article 5

The people's Republic of China shall, on the principle of equality and mutual benefit, promote and develop trade relations with other countries and regions, enter into or participate in such regional economic trade agreements as customs union agreement, free trade agreement and participate in regional economic organizations.

#### Article 6

The People's Republic of China shall, in accordance with the international treaties and agreements to which it is a contracting party or a participating party grant the

other contracting parties or participating parties, or on the principle of reciprocity grant the other party most-favored-nation treatment or national treatment in the field of foreign trade.

#### Article 7

In the event that any country or region applies prohibitive, restrictive or other like measures on a discriminatory basis against the People's Republic of China in respect of trade, the People's Republic of China may, as the case may be, take counter-measures against the country or region in question.

### Chapter II Foreign Trade Dealers

#### Article 8

For the purposes of this Law, "foreign trade dealers" refers to legal persons, other organizations or individuals that have fulfilled the industrial and commercial registration or other practicing procedures in accordance with laws and engage in foreign trade dealings in compliance with this Law and other relevant laws and administrative regulations.

#### Article 9

Foreign trade dealers engaged in import and export of goods or technologies shall register with the authority responsible for foreign trade under the State Council or its authorized bodies unless laws, regulations and the authority responsible for foreign trade under the State Council do not so require. The specific measures for registration shall be laid down by the authority responsible for foreign trade under the State Council. Where foreign trade dealers fail to register as required, the Customs authority shall not process the procedures of declaration, examination and release for the imported and exported goods.

#### Article 10

The international trade in services shall be carried out in compliance with the provisions of this Law and other

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relevant laws and administrative regulations. The units engaged in foreign contract of construction project or foreign labor cooperation shall be equipped with corresponding eligibility or qualification. The specific measures therefore shall be laid down by the State Council.

**Article 11**

The State may implement state trading on certain goods. The import and export of the goods subject to state trading shall be operated only by the authorized enterprises unless the state allows the import and export of certain quantities of the goods subject to state trading to be operated by the enterprises without authorization. The lists of the goods subject to state trading and the authorized enterprises shall be determined, adjusted and made public by the authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council. In the event of importation of the goods subject to state trading without authorization in violation of paragraph 1 of this Article, the Customs shall not grant release.

**Article 12**

Foreign trade dealers may accept the authorization of others and conduct foreign trade as an agent within its scope of business.

**Article 13**

Foreign trade dealers shall, in accordance with the regulations laid down by the authority responsible for foreign trade under the State Council or other relevant authorities under the State Council in accordance with law, submit the documents and materials relevant to their foreign trade dealings to relevant authorities. The authorities concerned shall keep business secrets confidential for the providers thereof.

**Chapter III Import and Export of Goods and Technologies****Article 14**

The State permit free import and export of goods and technologies unless the laws or administrative regulations provide otherwise.

**Article 15**

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The authority responsible for foreign trade under the State Council may, in accordance with the need to supervise import and export, implement automatic import and export licensing certain goods subject to free import and export and make public the list thereof. Where the consignee or the consigner of the imported or exported goods subject to automatic licensing submits the automatic licensing application before going through the Customs declaration procedures, the authority responsible for foreign trade under the State Council or its authorized authorities shall grant approval. In case of failure to accomplish automatic licensing procedures, the Customs shall not grant release. In the case of importing or exporting technologies subject to free import and export, the contracts thereof shall be registered with the authority responsible for foreign trade under the State Council or its authorized authorities.

**Article 16**

The State may restrict or prohibit the import or export of relevant goods and technologies for the following reasons that:

- (1) the import or export needs to be restricted or prohibited in order to safeguard the state security, public interests or public morals,
- (2) the import or export needs to be restricted or prohibited in order to protect the human health or security, the animals and plants life or health or the environment,
- (3) the import or export needs to be restricted or prohibited in order to implement the measures relating to the importations and exportations of gold or silver,
- (4) the export needs to be restricted or prohibited in the case of domestic shortage in supply or the effective protection of exhaustible natural resources,
- (5) the export needs to be restricted in the case of the limited market capacity of the importing country or region,
- (6) the export needs to be restricted in the case of the occurrence of serious confusion in the export operation order,
- (7) the import needs to be restricted in order to establish or accelerate the establishment of a particular domestic industry,
- (8) the restriction on the import of agricultural, animal husbandry or fishery products in any form is necessary,
- (9) the import needs to be restricted in order to maintain the State's international financial status and the balance of international payment,
- (10) the import or export needs to be restricted or prohib-

ited as laws and administrative regulations so provide, (11) the import or export needs to be restricted or prohibited as the international treaties or agreements to which the state is a contracting party or a participating party so require.

**Article 17**

The State may, in the case of the import or export of the goods and technologies relating to fissionable and fissionable materials or the materials from which they are derived as well as the import or export relating to arms, ammunition and implements for war, take any measures as necessary to safeguard the state security. The State may, in the time of war or for the protection of international peace and security, take any measures as necessary in respect of import or export of goods and technologies.

**Article 18**

The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 16 and 17 in this Law, establish, adjust and publish the list of goods and technologies of which the import or export is subject to restrictions or prohibitions. The authority responsible for foreign trade under the State Council independently or in conjunction with other relevant authorities under the State Council may, with the approval from the State Council, decide, on a temporary basis, to impose restrictions or prohibitions on the import or export of goods and technologies not included in the list provided in the above paragraph within the meaning of Article 16 and Article 17 in this Law.

**Article 19**

Goods subject to import or export restriction shall be subject to quota and/or licensing control; technologies whose import or export is restricted shall be subject to licensing control. Import or export of any goods and technologies subject to quota and/or licensing control will be effected only with the approval of the authorities responsible for foreign trade under the State Council or the joint approval of the foregoing authorities and other relevant authorities under the State Council in compliance with the provisions of the State Council. Certain imported goods may be subject to tariff rate quota control.

**Article 20**

Quotas and tariff rate quotas of the imported and exported goods shall be distributed on the principles of transparency, equity, impartiality and efficiency by the authority responsible for foreign trade under the State Council or the relevant authorities under the State Council within their respective responsibilities. Specific measures for the distribution shall be laid down by the State Council.

**Article 21**

The state shall implement the commodity assessment system in a uniform manner and in accordance with the provisions of relevant laws and administrative regulations carry out certification, inspection or quarantine in respect of imported and exported commodities.

**Article 22**

The state shall implement origin management in respect of the imported and exported goods. Specific measures therefore shall be laid down by the State Council.

**Article 23**

Where the import or export of cultural relics, wildlife animals, plants and the products thereof are prohibited or restricted by other laws or administrative regulations, the provisions of relevant laws and regulations shall be observed.

**Chapter IV International Trade in Services****Article 24**

In respect of international trade in services, the People's Republic of China shall, in accordance with the commitments made in international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, grant the other contracting parties or participating parties market access and national treatment.

**Article 25**

The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, pursuant to provisions

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of this Law and other laws and administrative regulations, administer the international trade in services.

#### Article 26

The State may impose restrictions and prohibitions on the international trade in services for the reasons that:

- (1) restrictions or prohibitions are needed to safeguard the state security, public interests or public morals,
- (2) restrictions or prohibitions are needed to protect the human health or security, the animals and plants life or health or the environment,
- (3) restrictions are needed to establish or accelerate the establishment of a particular domestic service industry,
- (4) restrictions are needed to maintain the balance of international payment of the state,
- (5) restrictions or prohibitions are needed as laws and administrative regulations so provide,
- (6) restrictions or prohibitions are needed as the international treaties or agreements to which the state is a contracting party or a participating party so require.

#### Article 27

The State may, in the case of military-related international trade in services, as well as the international trade in services relating to fissionable and fissionable materials or the materials form which they are derived, take any measures as necessary to safeguard the state security. The state may, in the time of war or for the protection of international peace and security, take any measures as necessary in respect of international trade in services.

#### Article 28

The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 26 and 27 in this Law and other relevant laws and administrative regulations, determine, adjust and publish the market access list of international trade in services.

## Chapter V Protection of Trade-Related Aspects of Intellectual Property Rights

#### Article 29

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The State shall, in accordance with laws and administrative regulations relevant to intellectual property rights, protect trade-related aspects of intellectual property rights. Where the imported goods infringe intellectual property rights and impair foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the import of the relevant goods from being produced or sold by the infringer within a certain period.

#### Article 30

Where the intellectual property right owner is involved in any one of such practices as preventing the licensee from challenging the validity of the intellectual property right in the licensing contract, conducting coercive package licensing or incorporating exclusive grantback conditions in the licensing contract, which impairs the fair competition order of foreign trade, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate such impairment.

#### Article 31

If other countries or regions do not grant the legal persons, other organizations and individual from the People's Republic of China national treatment in respect of the protection of intellectual property rights, or cannot provide adequate and effective protection of intellectual property rights for the goods, technologies or services from the People's Republic of China, the authority responsible for foreign trade under the State Council may, in accordance with the provisions of this Law and other relevant laws and administrative regulations and the international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, take measures as necessary in respect of the trade with the country or region in question.

## Chapter VI Foreign Trade Order

#### Article 32

In foreign trade dealings, monopolistic behavior in violation of relevant provisions of anti-monopoly laws and administrative regulations is not allowed. In foreign trade dealings, any monopolistic behavior with the effect of eliminating market fair competition shall be disposed of in accordance with relevant provisions of anti-monopoly laws and administrative regulations. Where any activi-

ties in violation of laws set forth in the former paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate the impairment.

### Article 33

In foreign trade activities, such unfair competition activities as selling the products at unreasonable low prices, colluding with each other in a tender, producing and releasing false advertisements and conducting commercial bribery and others like are not allowed. Any unfair competitive practice conducted in the foreign trade activities shall be disposed of in accordance with relevant laws and administrative regulations against unfair competition. Where any illegal activities as provided in the previous paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the dealer from importing and exporting relevant goods and technologies to eliminate the impairment.

### Article 34

The following practices are not allowed in foreign trade activities:

- (1) forgery, distortion of origin marks of the imported and exported goods; forgery, distortion or trading of origin certificates of imported or exported goods, import and export licenses, certificates of import and export quota or any other certificate for import and export;
- (2) defrauding the State of the refunded tax on exports;
- (3) smuggling;
- (4) evading certification, inspection and quarantine inspection as provided by laws and administrative regulations;
- (5) other activities in violation of the provisions of laws and administrative regulations.

### Article 35

In foreign trade activities, foreign trade dealers shall act in compliance with relevant provisions of foreign exchange administration of the state.

### Article 36

The authority responsible for foreign trade under the State Council may give a notice to the public the activities in violation of this Law for impairing foreign trade order.

## Chapter VII Foreign Trade Investigation

### Article 37

In order to maintain the foreign trade order, the authority responsible for foreign trade under the State Council may carry out investigations on the following matters in accordance with laws and administrative regulations at its disposal or in conjunction with other relevant administrations:

- (1) the impact on the domestic industry as well as the competitive strengths of import and export of goods, import and export of technologies and international trade in services;
- (2) trade barriers of relevant countries or regions;
- (3) matters needed to be investigated on in order to determine whether such foreign trade remedies as anti-dumping, countervailing or safeguard measures shall be taken;
- (4) activities that circumvent foreign trade remedies;
- (5) matters in relation to state security in foreign trade;
- (6) matters needed to be investigated on in order to enforce the provisions of Articles 7, 29(2),30,31,32(3) and 33(3).
- (7) Other matters which may have impact on foreign trade order and need to be investigated on.

### Article 38

The authority responsible for foreign trade shall give a notice in case of initiating foreign trade investigations. The investigation may take the form of questionnaires in writing, hearings, on-the-spot investigations, entrusted investigations and otherwise. The authority responsible for foreign trade under the State Council shall, on the basis of the findings, submit investigation reports or make determinations and give public notices.

### Article 39

Relevant units and individuals shall provide the foreign trade investigation with cooperation and assistance. The authority in charge of foreign trade and other authorities

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under the State Council as well as their staff members shall have the obligation to keep the state secrets and business secrets known to them confidential during foreign trade investigations.

## Chapter VIII Foreign Trade Remedies

### Article 40

The State may take appropriate foreign trade remedies on the basis of the findings of foreign trade investigation.

### Article 41

Where a product from other countries or regions is dumped into the domestic market at a price less than its normal value and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the State may take anti-dumping measures to eliminate or mitigate such injury, threat of injury or retardation.

### Article 42

Where the export of a product from other countries or regions to the market of a third country causes or threatens to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the authority responsible for foreign trade under the State Council may, on the request of the domestic industries, carry out consultations with the government of that third country and require it to take appropriate measures.

### Article 43

Where an imported product has directly or indirectly accepts any specific subsidiary granted by the exporting country or region and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of related domestic industries, the State may take countervailing measures to eliminate or mitigate such injury or threat of injury or retardation.

### Article 44

Where a product is being imported in substantially in-

creased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the State may take safeguard measures as necessary to eliminate or mitigate such injury or threat of injury and provide the industry concerned with necessary support.

### Article 45

Where the increase of services provided to China by the service suppliers from other countries or regions causes or threatens to cause injury to the domestic industries that provide like or directly competitive services, the State may take remedies as necessary to eliminate or mitigate such injury or threat of injury and provide such industry with necessary support.

### Article 46

Where the restriction imposed by a third country on the import of a certain product causes the increase in quantities of such product imported into the domestic market and under such conditions as to cause or threaten to cause injury to the established domestic industry, or materially retards the establishment of related domestic industries, the state may take remedies as necessary to restrict the import of the product concerned.

### Article 47

Where any country or region that enters into or participate in the economic and trade treaties or agreements with the People's Republic of China deprives the People's Republic of China of or impairs her interests under such treaties or agreements, or hinders realization of the object of such treaties or agreements, the People's Republic of China has the right to request the relevant country or region to take appropriate remedies and has the right to suspend or terminate its performance of relevant obligations in compliance with relevant treaties and agreements.

### Article 48

The authority responsible for foreign trade under the State Council shall carry out bilateral or multilateral foreign trade consultations, negotiations and settle disputes in accordance with this Law and other relevant laws.

### Article 49

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The authority responsible for foreign trade under the State Council and the other relevant authorities under the State Council shall establish the pre-warning and emergency system for import and export of goods, import and export of technologies and international trade in services so as to cope with the unexpected and unusual situations in foreign trade for the purpose of safeguarding the economic security of the State.

**Article 50**

The State may take necessary anti-circumvention measures against the activities circumventing the foreign trade remedies provided under this Law.

**Chapter IX Foreign Trade Promotion****Article 51**

The State formulates foreign trade expansion strategies, establishes and improves the foreign trade promotion mechanism.

**Article 52**

The State shall establish and improve financial institutions for foreign trade and establish funds for foreign trade development and risk as the development of foreign trade requires.

**Article 53**

The State may take such measures as import and export credit, export credit insurance, export tax refund and other foreign trade promotion measures for the purpose of developing foreign trade.

**Article 54**

The State establishes the foreign trade public information service system, providing foreign trade dealers and the public with information services.

**Article 55**

The State shall take measures to encourage foreign trade dealer to explore international market, and develop foreign trade by adopting various forms such as foreign investment, foreign contract of construction project and foreign labor cooperation.

**Article 56**

Foreign trade dealers may organize or participate in relevant associations or chambers of commerce for importers and exporters in accordance with the law.

Relevant associations or chambers of commerce shall abide by relevant laws and regulations, provide in compliance with their articles of association their members with foreign trade related services in aspects of manufacturing, marketing, information and training, play a positive role in coordination and self-discipline, submit applications for relevant foreign trade remedies, safeguard the interests of their members and the industry, report to the relevant authorities the suggestions of their members with respect to foreign trade promotion, and actively promote foreign trade.

**Article 57**

The organization for the promotion of international trade in China shall, in accordance with its articles of association, engage in developing foreign trade relations, sponsoring exhibitions, providing information and advisory services and carry out other foreign trade promotion activities.

**Article 58**

The State shall support and facilitate the foreign trade carried out by small and medium-sized enterprises with small or middle scale.

**Article 59**

The State shall support and promote the development of foreign trade in national autonomous areas and economically under-developed areas.

**Chapter X Legal Liabilities****Article 60**

Anyone who imports or exports the goods subject to the state trading without authorization in violation of Article 11 of this Law may be imposed on a fine of not more than RMB 50,000 Yuan by the authority responsible for foreign trade under the State Council or other authorities under the State Council; if the circumstances are serious, the aforesaid authorities may refuse to accept the application submitted by the trade dealer in violation of

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laws for carrying out imports or exports of the goods subject to state trading within three years from the date the administrative sanction decision takes effect or may withdraw the granted authorization of import and export of goods subject to state trading.

#### **Article 61**

Anyone who imports and exports the goods of which import and export is prohibited, or imports and exports the goods of which import and export is restricted without authorization shall be disposed of and punished by the Customs in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law.

Anyone who imports and exports the technologies of which import and export is prohibited, or imports and exports the technologies of which import and export is restricted without authorization shall be disposed of and punished in accordance with relevant laws and regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal proceeds and impose a fine from one to five times the amount of the illegal gains. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law.

The authority responsible for foreign trade under the State Council and other relevant authorities under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in paragraphs 1 and 2 of this Article, refuse the applications for import and export quotas or licenses submitted by the law-breaker, or prohibit the law-breaker from engaging in the import and export of relevant goods and technologies within a period from one to three years.

#### **Article 62**

Anyone who engages in the international trade in services subject to prohibition or engages in international trade in services subject to restriction without authorization shall be disposed of and punished in accordance

relevant laws and administrative regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal gains and impose a fine from one to five times the amount of the illegal proceeds. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law.

The authority responsible for foreign trade under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the law-breaker from engaging in relevant international trade in services within a period from one to three years.

#### **Article 63**

Anyone who acts in violation of the provision of Article 34 of this Law shall be punished in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law.

The authority responsible for foreign trade under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the law-breaker from engaging in relevant foreign trade activities within a period from one to three years.

#### **Article 64**

Where a foreign trade dealer is prohibited from engaging in the relevant foreign trade activities in accordance with Articles 61-63, within the period of prohibition the Customs authority shall not grant release to the relevant imported or exported goods of that foreign trade dealer in accordance with the decision made by the authority responsible for foreign trade under the State Council, and the foreign exchange administration or designated foreign exchange banks shall not process the procedures of selling and purchasing foreign exchange.

#### **Article 65**

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Any staff member serving in the authority responsible for foreign trade in accordance with this Law who neglects his duty, engages in malpractices for personal gains or abuses his power, shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case does not constitute a crime in accordance with the law. Any staff member serving in the authority responsible for foreign trade in accordance with this Law, who extorts property from others with job convenience or illegally accepts others' property and seeks advantages for them in return shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case does not constitute a crime in accordance with the law.

**Article 66**

The parties in the foreign trade activities may apply for an administrative reconsideration or bring an administrative lawsuit before a people's court in case of dissatisfaction with a specific administrative act by the authority responsible for foreign trade administration in accordance with this Law.

**Chapter XI Supplementary Provisions****Article 67**

Where other laws or administrative regulations provide otherwise in respect of foreign trade administration of military supplies, fissionable and fissionable materials or the materials from which they are derived and import and export administration of cultural products, the provisions thereof shall be observed.

**Article 68**

The State applies flexible measures, provides preferential conditions and conveniences to the trade between the towns on the frontier and those towns of neighboring countries on frontier as well as trade among border residents. Specific measures therefore shall be laid down by the State Council.

**Article 69**

This Law shall not apply to the separate customs territories of the People's Republic of China.

**Article 70**

This Law shall come into force as of July 1, 2004.

Promulgated by The Standing committee of the National People's Congress on 2004-4-6

# 中华人民共和国对外贸易法

2004. 04. 06

## 第一章 总则

### 第一条

为了扩大对外开放，发展对外贸易，维护对外贸易秩序，保护对外贸易经营者的合法权益，促进社会主义市场经济的健康发展，制定本法。

### 第二条

本法适用于对外贸易以及与对外贸易有关的知识产权保护。

本法所称对外贸易，是指货物进出口、技术进出口和国际服务贸易。

### 第三条

国务院对外贸易主管部门依照本法主管全国对外贸易工作。

### 第四条

国家实行统一的对外贸易制度，鼓励发展对外贸易，维护公平、自由的对外贸易秩序。

### 第五条

中华人民共和国根据平等互利的原则，促进和发展同其他国家和地区的贸易关系，缔结或者参加关税同盟协定、自由贸易区协定等区域经济贸易协定，参加区域经济组织。

### 第六条

中华人民共和国在对外贸易方面根据所缔结或者参加的国际条约、协定，给予其他缔约方、参加方最惠国待遇、国民待遇等待遇，或者根据互惠、对等原则给予对方最惠国待遇、国民待遇等待遇。

### 第七条

任何国家或者地区在贸易方面对中华人民共和国采取歧视性的禁止、限制或者其他类似措施的，中华人民共和国可以根据实际情况对该国家或者该地区采取相应的措施。

## 第二章 对外贸易经营者

### 第八条

本法所称对外贸易经营者，是指依法办理工商登记或者其他执业手续，依照本法和其他有关法律、行政法规的规定从事对外贸易经营活动的法人、其他组织或者个人。

### 第九条

从事货物进出口或者技术进出口的对外贸易经营者，应当向国务院对外贸易主管部门或者其委托的机构办理备案登记；但是，法律、行政法规和国务院对外贸易主管部门规定不需要备案登记的除外。备案登记的具体办法由国务院对外贸易主管部门规定。对外贸易经营者未按照规定办理备案登记的，海关不予办理进出口货物的报关验放手续。

### 第十条

从事国际服务贸易，应当遵守本法和其他有关法律、行政法规的规定。

从事对外工程承包或者对外劳务合作的单位，应当具备相应的资质或者资格。具体办法由国务院规定。

### 第十一条

国家可以对部分货物的进出口实行国营贸易管理。实行国营贸易管理货物的进出口业务只能由经授权的企业经营；但是，国家允许部分数量的国营贸易管理货物的进出口业务由非授权企业经营的除外。实行国营贸易管理的货物和经授权经营企业的目录，由国务院对外贸易主管部门会同国务院其他有关部门确定、调整并公布。

违反本条第一款规定，擅自进出口实行国营贸易管理的货物的，海关不予放行。

### 第十二条

对外贸易经营者可以接受他人的委托，在经营范围内代为办理对外贸易业务。

### 第十三条

对外贸易经营者应当按照国务院对外贸易主管部门或者国务院其他有关部门依法作出的规定，向有关部门提交与其对外贸易经营活动有关的文件及资料。有关部门应当为提供者保守商业秘密。

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### 第三章 货物进出口与技术进出口

#### 第十四条

国家准许货物与技术的自由进出口。但是，法律、行政法规另有规定的除外。

#### 第十五条

国务院对外贸易主管部门基于监测进出口情况的需要，可以对部分自由进出口的货物实行进出口自动许可并公布其目录。

实行自动许可的进出口货物，收货人、发货人在办理海关报关手续前提出自动许可申请的，国务院对外贸易主管部门或者其委托的机构应当予以许可；未办理自动许可手续的，海关不予放行。

进出口属于自由进出口的技术，应当向国务院对外贸易主管部门或者其委托的机构办理合同备案登记。

#### 第十六条

国家基于下列原因，可以限制或者禁止有关货物、技术的进口或者出口：

（一）为维护国家安全、社会公共利益或者公共道德，需要限制或者禁止进口或者出口的；

（二）为保护人的健康或者安全，保护动物、植物的生命或者健康，保护环境，需要限制或者禁止进口或者出口的；

（三）为实施与黄金或者白银进出口有关的措施，需要限制或者禁止进口或者出口的；

（四）国内供应短缺或者为有效保护可能用竭的自然资源，需要限制或者禁止出口的；

（五）输往国家或者地区的市场容量有限，需要限制出口的；

（六）出口经营秩序出现严重混乱，需要限制出口的；

（七）为建立或者加快建立国内特定产业，需要限制进口的；

（八）对任何形式的农业、牧业、渔业产品有必要限制进口的；

（九）为保障国家国际金融地位和国际收支平衡，需要限制进口的；

（十）依照法律、行政法规的规定，其他需要限制或者禁止进口或者出口的；

（十一）根据我国缔结或者参加的国际条约、协定的规定，其他需要限制或者禁止进口或者出口的。

#### 第十七条

国家对与裂变、聚变物质或者衍生此类物质的物质有关的货物、技术进出口，以及与武器、弹药或者其他军用物资有关的进出口，可以采取任何必要的措施，维

护国家安全。

在战时或者为维护国际和平与安全，国家在货物、技术进出口方面可以采取任何必要的措施。

#### 第十八条

国务院对外贸易主管部门会同国务院其他有关部门，依照本法第十六条和第十七条的规定，制定、调整并公布限制或者禁止进出口的货物、技术目录。

国务院对外贸易主管部门或者由其会同国务院其他有关部门，经国务院批准，可以在本法第十六条和第十七条规定的范围内，临时决定限制或者禁止前款规定目录以外的特定货物、技术的进口或者出口。

#### 第十九条

国家对限制进口或者出口的货物，实行配额、许可证等方式管理；对限制进口或者出口的技术，实行许可证管理。

实行配额、许可证管理的货物、技术，应当按照国务院规定经国务院对外贸易主管部门或者经其会同国务院其他有关部门许可，方可进口或者出口。

国家对部分进口货物可以实行关税配额管理。

#### 第二十条

进出口货物配额、关税配额，由国务院对外贸易主管部门或者国务院其他有关部门在各自的职责范围内，按照公开、公平、公正和效益的原则进行分配。具体办法由国务院规定。

#### 第二十一条

国家实行统一的商品合格评定制度，根据有关法律、行政法规的规定，对进出口商品进行认证、检验、检疫。

#### 第二十二条

国家对进出口货物进行原产地管理。具体办法由国务院规定。

#### 第二十三条

对文物和野生动物、植物及其产品等，其他法律、行政法规有禁止或者限制进出口规定的，依照有关法律、行政法规的规定执行。

### 第四章 国际服务贸易

#### 第二十四条

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中华人民共和国在国际服务贸易方面根据所缔结或者参加的国际条约、协定中所作的承诺，给予其他缔约方、参加方市场准入和国民待遇。

## 第二十五条

国务院对外贸易主管部门和国务院其他有关部门，依照本法和其他有关法律、行政法规的规定，对国际服务贸易进行管理。

## 第二十六条

国家基于下列原因，可以限制或者禁止有关的国际服务贸易：

- (一) 为维护国家安全、社会公共利益或者公共道德，需要限制或者禁止的；
- (二) 为保护人的健康或者安全，保护动物、植物的生命或者健康，保护环境，需要限制或者禁止的；
- (三) 为建立或者加快建立国内特定服务产业，需要限制的；
- (四) 为保障国家外汇收支平衡，需要限制的；
- (五) 依照法律、行政法规的规定，其他需要限制或者禁止的；
- (六) 根据我国缔结或者参加的国际条约、协定的规定，其他需要限制或者禁止的。

## 第二十七条

国家对与军事有关的国际服务贸易，以及与裂变、聚变物质或者衍生此类物质的物质有关的国际服务贸易，可以采取任何必要的措施，维护国家安全。

在战时或者为维护国际和平与安全，国家在国际服务贸易方面可以采取任何必要的措施。

## 第二十八条

国务院对外贸易主管部门会同国务院其他有关部门，依照本法第二十六条、第二十七条和其他有关法律、行政法规的规定，制定、调整并公布国际服务贸易市场准入目录。

## 第五章 与对外贸易有关的知识产权保护

### 第二十九条

国家依照有关知识产权的法律、行政法规，保护与对外贸易有关的知识产权。

进口货物侵犯知识产权，并危害对外贸易秩序的，国务院对外贸易主管部门可以采取在一定期限内禁止侵权人生产、销售的有关货物进口等措施。

### 第三十条

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知识产权权利人有阻止被许可人对许可合同中的知识产权的有效性提出质疑、进行强制性一揽子许可、在许可合同中规定排他性返授条件等行为之一，并危害对外贸易公平竞争秩序的，国务院对外贸易主管部门可以采取必要的措施消除危害。

### 第三十一条

其他国家或者地区在知识产权保护方面未给予中华人民共和国的法人、其他组织或者个人国民待遇，或者不能对来源于中华人民共和国的货物、技术或者服务提供充分有效的知识产权保护的，国务院对外贸易主管部门可以依照本法和其他有关法律、行政法规的规定，并根据中华人民共和国缔结或者参加的国际条约、协定，对该国家或者该地区的贸易采取必要的措施。

## 第六章 对外贸易秩序

### 第三十二条

在对外贸易经营活动中，不得违反有关反垄断的法律、行政法规的规定实施垄断行为。

在对外贸易经营活动中实施垄断行为，危害市场公平竞争的，依照有关反垄断的法律、行政法规的规定处理。有前款违法行为，并危害对外贸易秩序的，国务院对外贸易主管部门可以采取必要的措施消除危害。

### 第三十三条

在对外贸易经营活动中，不得实施以不正当的低价销售商品、串通投标、发布虚假广告、进行商业贿赂等不正当竞争行为。

在对外贸易经营活动中实施不正当竞争行为的，依照有关反不正当竞争的法律、行政法规的规定处理。有前款违法行为，并危害对外贸易秩序的，国务院对外贸易主管部门可以采取禁止该经营者有关货物、技术进出口等措施消除危害。

### 第三十四条

在对外贸易活动中，不得有下列行为：

- (一) 伪造、变造进出口货物原产地标记，伪造、变造或者买卖进出口货物原产地证书、进出口许可证、进出口配额证明或者其他进出口证明文件；
- (二) 骗取出口退税；
- (三) 走私；
- (四) 逃避法律、行政法规规定的认证、检验、检疫；
- (五) 违反法律、行政法规规定的其他行为。

### 第三十五条

对外贸易经营者在对外贸易经营活动中，应当遵守国家有关外汇管理的规定。

### 第三十六条

违反本法规定，危害对外贸易秩序的，国务院对外贸易主管部门可以向社会公告。

## 第七章 对外贸易调查

### 第三十七条

为了维护对外贸易秩序，国务院对外贸易主管部门可以自行或者会同国务院其他有关部门，依照法律、行政法规的规定对下列事项进行调查：

- (一) 货物进出口、技术进出口、国际服务贸易对国内产业及其竞争力的影响；
- (二) 有关国家或者地区的贸易壁垒；
- (三) 为确定是否应当依法采取反倾销、反补贴或者保障措施等对外贸易救济措施，需要调查的事项；
- (四) 规避对外贸易救济措施的行为；
- (五) 对外贸易中有关国家安全利益的事项；
- (六) 为执行本法第七条、第二十九条第二款、第三十条、第三十一条、第三十二条第三款、第三十三条第三款的规定，需要调查的事项；
- (七) 其他影响对外贸易秩序，需要调查的事项。

### 第三十八条

启动对外贸易调查，由国务院对外贸易主管部门发布公告。

调查可以采取书面问卷、召开听证会、实地调查、委托调查等方式进行。

国务院对外贸易主管部门根据调查结果，提出调查报告或者作出处理裁定，并发布公告。

### 第三十九条

有关单位和个人应当对对外贸易调查给予配合、协助。

国务院对外贸易主管部门和国务院其他有关部门及其工作人员进行对外贸易调查，对知悉的国家秘密和商业秘密负有保密义务。

## 第八章 对外贸易救济

### 第四十条

国家根据对外贸易调查结果，可以采取适当的对外贸易救济措施。

### 第四十一条

其他国家或者地区的产品以低于正常价值的倾销方式进入我国市场，对已建立的国内产业造成实质损害或者产生实质损害威胁，或者对建立国内产业造成实质阻碍的，国家可以采取反倾销措施，消除或者减轻这种损害或者损害的威胁或者阻碍。

### 第四十二条

其他国家或者地区的产品以低于正常价值出口至第三国市场，对我国已建立的国内产业造成实质损害或者产生实质损害威胁，或者对我国建立国内产业造成实质阻碍的，应国内产业的申请，国务院对外贸易主管部门可以与该第三国政府进行磋商，要求其采取适当的措施。

### 第四十三条

进口的产品直接或者间接地接受出口国家或者地区给予的任何形式的专向性补贴，对已建立的国内产业造成实质损害或者产生实质损害威胁，或者对建立国内产业造成实质阻碍的，国家可以采取反补贴措施，消除或者减轻这种损害或者损害的威胁或者阻碍。

### 第四十四条

因进口产品数量大量增加，对生产同类产品或者与其直接竞争的产品的国内产业造成严重损害或者严重损害威胁的，国家可以采取必要的保障措施，消除或者减轻这种损害或者损害的威胁，并可以对该产业提供必要的支持。

### 第四十五条

因其他国家或者地区的服务提供者向我国提供的服务增加，对提供同类服务或者与其直接竞争的服务的国内产业造成损害或者产生损害威胁的，国家可以采取必要的救济措施，消除或者减轻这种损害或者损害的威胁。

### 第四十六条

因第三国限制进口而导致某种产品进入我国市场的数量大量增加，对已建立的国内产业造成损害或者产生损害威胁，或者对建立国内产业造成阻碍的，国家可以采取必要的救济措施，限制该产品进口。

### 第四十七条

与中华人民共和国缔结或者共同参加经济贸易条约、协定的国家或者地区，违反条约、协定的规定，使中华人民共和国根据该条约、协定享有的利益丧失或者受损，或者阻碍条约、协定目标实现的，中华人民共和国政府有权要求有关国家或者地区政府采取适当的补救

措施，并可以根据有关条约、协定中止或者终止履行相关义务。

#### 第四十八条

国务院对外贸易主管部门依照本法和其他有关法律的规定，进行对外贸易的双边或者多边磋商、谈判和争端的解决。

#### 第四十九条

国务院对外贸易主管部门和国务院其他有关部门应当建立货物进出口、技术进出口和国际服务贸易的预警应急机制，应对对外贸易中的突发和异常情况，维护国家经济安全。

#### 第五十条

国家对规避本法规定的对外贸易救济措施的行为，可以采取必要的反规避措施。

## 第九章 对外贸易促进

#### 第五十一条

国家制定对外贸易发展战略，建立和完善对外贸易促进机制。

#### 第五十二条

国家根据对外贸易发展的需要，建立和完善为对外贸易服务的金融机构，设立对外贸易发展基金、风险基金。

#### 第五十三条

国家通过进出口信贷、出口信用保险、出口退税及其他促进对外贸易的方式，发展对外贸易。

#### 第五十四条

国家建立对外贸易公共信息服务体系，向对外贸易经营者和其他社会公众提供信息服务。

#### 第五十五条

国家采取措施鼓励对外贸易经营者开拓国际市场，采取对外投资、对外工程承包和对外劳务合作等多种方式，发展对外贸易。

#### 第五十六条

对外贸易经营者可以依法成立和参加有关协会、商会。

有关协会、商会应当遵守法律、行政法规，按照章程对其成员提供与对外贸易有关的生产、营销、信息、培训等方面的服务，发挥协调和自律作用，依法提出有关对外贸易救济措施的申请，维护成员和行业的利益，向政府有关部门反映成员有关对外贸易的建议，开展对外贸易促进活动。

#### 第五十七条

中国国际贸易促进组织按照章程开展对外联系，举办展览，提供信息、咨询服务和其他对外贸易促进活动。

#### 第五十八条

国家扶持和促进中小企业开展对外贸易。

#### 第五十九条

国家扶持和促进民族自治地方和经济不发达地区发展对外贸易。

## 第十章 法律责任

#### 第六十条

违反本法第十一条规定，未经授权擅自进出口实行国营贸易管理的货物的，国务院对外贸易主管部门或者国务院其他有关部门可以处五万元以下罚款；情节严重的，可以自行政处罚决定生效之日起三年内，不受理违法行为人从事国营贸易管理货物进出口业务的应用，或者撤销已给予其从事其他国营贸易管理货物进出口的授权。

#### 第六十一条

进出口属于禁止进出口的货物的，或者未经许可擅自进出口属于限制进出口的货物的，由海关依照有关法律、行政法规的规定处理、处罚；构成犯罪的，依法追究刑事责任。

进出口属于禁止进出口的技术的，或者未经许可擅自进出口属于限制进出口的技术的，依照有关法律、行政法规的规定处理、处罚；法律、行政法规没有规定的，由国务院对外贸易主管部门责令改正，没收违法所得，并处违法所得一倍以上五倍以下罚款，没有违法所得或者违法所得不足一万元的，处一万元以上五万元以下罚款；构成犯罪的，依法追究刑事责任。

自前两款规定的行政处罚决定生效之日或者刑事处罚判决生效之日起，国务院对外贸易主管部门或者国务院其他有关部门可以在三年内不受理违法行为人提出的进出口配额或者许可证的申请，或者禁止违法行为人在一年以上三年以下的期限内从事有关货物或者技术的进出口经营活动。

## 第六十二条

从事属于禁止的国际服务贸易的，或者未经许可擅自从事属于限制的国际服务贸易的，依照有关法律、行政法规的规定处罚；法律、行政法规没有规定的，由国务院对外贸易主管部门责令改正，没收违法所得，并处违法所得一倍以上五倍以下罚款，没有违法所得或者违法所得不足一万元的，处一万元以上五万元以下罚款；构成犯罪的，依法追究刑事责任。

国务院对外贸易主管部门可以禁止违法行为人自前款规定的行政处罚决定生效之日或者刑事处罚判决生效之日起一年以上三年以下的期限内从事有关的国际服务贸易经营活动。

## 第六十三条

违反本法第三十四条规定，依照有关法律、行政法规的规定处罚；构成犯罪的，依法追究刑事责任。

国务院对外贸易主管部门可以禁止违法行为人自前款规定的行政处罚决定生效之日或者刑事处罚判决生效之日起一年以上三年以下的期限内从事有关的对外贸易经营活动。

## 第六十四条

依照本法第六十一条至第六十三条规定被禁止从事有关对外贸易经营活动的，在禁止期限内，海关根据国务院对外贸易主管部门依法作出的禁止决定，对该对外贸易经营者的有关进出口货物不予办理报关验放手续，外汇管理部门或者外汇指定银行不予办理有关结汇、售汇手续。

## 第六十五条

依照本法负责对外贸易管理工作的部门的工作人员玩忽职守、徇私舞弊或者滥用职权，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。依照本法负责对外贸易管理工作的部门的工作人员利用职务上的便利，索取他人财物，或者非法收受他人财物为他人谋取利益，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予行政处分。

## 第六十六条

对外贸易经营活动当事人对依照本法负责对外贸易管理工作的部门作出的具体行政行为不服的，可以依法申请行政复议或者向人民法院提起行政诉讼。

## 第十一章 附则

## 第六十七条

与军品、裂变和聚变物质或者衍生此类物质的物质

有关的对外贸易管理以及文化产品的进出口管理，法律、行政法规另有规定的，依照其规定。

## 第六十八条

国家对边境地区与接壤国家边境地区之间的贸易以及边民互市贸易，采取灵活措施，给予优惠和便利。具体办法由国务院规定。

## 第六十九条

中华人民共和国的单独关税区不适用本法。

## 第七十条

本法自2004年7月1日起施行。

全国人民代表大会常务委员会 2004年4月6日 颁布

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