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Regulations of the People's Republic of China on Customs Security

(Adopted at the 124th Executive Meeting of the State Council on September 1, 2010, promulgated by Decree No. 581 of the State Council of the People's Republic of China on September 14, 2010, and effective as of January 1, 2011)

Article 1 These Regulations are formulated in accordance with the provisions of the Customs Law of the People's Republic of China and other relevant laws for the purpose of regulating customs security, raising clearance efficiency, and ensuring customs supervision and control.

Article 2 These Regulations are applicable where an interested party applies to the Customs for provision of customs security and undertakes to fulfill its legal obligations and where the Customs handles such security for interested parties.

Article 3 In respect of customs security, the principles of legality, good faith and balanced rights and obligations shall be followed.

Article 4 Under any of the following circumstances, an interested party may, before completion of the customs formalities, apply to the Customs for provision of a security for earlier release of goods:

- (1) the commodity classification, customs value or origin of the imported or exported goods has not been determined;
- (2) valid declaration documents have not been submitted;
- (3) duties or taxes have not been paid upon expiry of the time limit for payment;
- (4) the late declaration fee has not been paid; or
- (5) other customs formalities have not been completed.

In the absence of a licensing document for inward or outward goods or articles that are subject to the restrictive provisions of the State, or under other circumstances where laws or administrative regulations prohibit the provision of a security, the Customs shall not handle the security for release.

Article 5 An interested party that applies for handling any of the following specific customs matters shall provide a security in accordance with the provisions of the Customs:

(1) a transportation operator's highway transportation of goods between the mainland and Hong Kong or the mainland and Macao, or of goods under customs control within the territory;

(2) temporary entry or exit of goods or articles;

(3) entry of goods for repair or exit of goods for processing;

(4) importation of goods on lease;

(5) transit of goods or means of transport;

(6) temporary storage of goods under customs control at a place outside a customs surveillance zone;

(7) mortgage of goods under customs control to a financial institution; or

(8) customs matters to be handled for bonded goods.

The Customs shall not handle the specific customs matters specified in the preceding paragraph where an interested party fails to provide a security or a security provided is not in conformity with the provisions.

Article 6 Where there is an obvious indication that a duty payer of imported or exported goods is transferring or concealing his leviable goods or other property within the specified time limit for duty payment, the Customs may order the duty payer to provide a security; if the duty payer fails to do so, the Customs shall take protective measures for duty collection in accordance with law.

Article 7 Where goods, articles or means of transport suspected of violating law shall be detained or sealed up by the Customs in accordance with law or have already been so detained or sealed up, the interested party may apply to the Customs for exemption from or lifting of the detention or seal-up by providing a security.

Where goods, articles or means of transport suspected of violating law cannot be detained or are not suitable for detention, the interested party or the person in charge of the means of transport shall provide the Customs with a security of equivalent value; if such security is not provided, the Customs may detain the interested party's other property of equivalent value.

The Customs shall not handle the application for a security where goods, articles or means of transport suspected of violating law are prohibited from entry or exit, or

must themselves be taken as evidence, or shall be confiscated in accordance with law.

Article 8 Where a legal person or any other organization is subject to customs penalty and its legal representative or head is to exit the territory before paying a fine, surrendering illegal income or paying the amount of money equivalent to the value of the goods, articles or means of transport used in smuggling that shall be recovered in accordance with law, the legal representative or head shall provide the Customs with a security; if such security is not provided, the Customs may notify the exit administration department, which shall prevent the legal representative or head from exiting the territory.

The preceding paragraph also applies to natural persons subject to customs penalty who is to exit the territory.

Article 9 Where a security shall be provided for importation of goods against which a provisional anti-dumping or countervailing measure has been taken, or a consignee or consignor of imported or exported goods or a holder of an intellectual property right applies for customs protection of intellectual property right, etc., customs security shall be handled in accordance with the provisions of these Regulations. Where laws or administrative regulations have special provisions on such matters, such special provisions shall prevail.

Article 10 Where an interested party has met all the following conditions for two consecutive years, it may apply to the regional Customs for exemption from provision of security, and go through the relevant formalities in accordance with the provisions of the Customs:

- (1) having passed the validation audit by the Customs;
- (2) having an annual error rate of not more than 3% in import and export declarations;
- (3) having no duty or tax payable in arrears;
- (4) having not been given any administrative penalty by the Customs and having no adverse record in the relevant administrative departments; and
- (5) having not been investigated for criminal liability.

Where an interested party no longer meets the conditions specified in the

preceding paragraph, the Customs shall cease to exempt it from provision of security.

Article 11 Where an interested party needs to go through the same customs formalities repeatedly within a certain period of time, it may apply to the Customs for provision of a general security. If the Customs accepts such a general security, the interested party no longer needs to provide a separate security each time when it goes through the said customs formalities.

The scope of application and the amount, duration and termination of a general security shall be prescribed by the General Administration of Customs.

Article 12 An interested party may provide a security in the form of property or rights recognized by the Customs in accordance with law, and the specific scope of such property or rights shall be determined by the General Administration of Customs.

Article 13 Where an interested party provides the Customs with a security in the form of a letter of guarantee, such a letter of guarantee shall be in favor of the Customs and specify the following particulars:

- (1) the basic information on the guarantor and the principal;
- (2) the legal obligations for which the security is provided;
- (3) the amount of security;
- (4) the duration of security;
- (5) the obligations of the guarantor; and
- (6) other matters that need to be specified.

The guarantor shall affix his seal to, and specify the date on, the letter of guarantee.

Article 14 A security provided by an interested party shall be proportionate to the legal obligations that it shall fulfill, and the amount of security shall be determined in accordance with the following standards except under the circumstances specified in the second paragraph of Article 7 of these Regulations:

- (1) in the case of a security provided for earlier release of goods, the amount of security shall not exceed the maximum of duties and taxes payable;
- (2) in the case of a security provided for the purpose of specific customs matters,

the amount of security shall not exceed the maximum of duties and taxes payable or the amount set by the General Administration of Customs;

(3) in the case of a security provided under an order where there is an obvious indication that the leviable goods or other property is being transferred or concealed, the amount of security shall not exceed the maximum of duties and taxes payable;

(4) in the case of a security provided for exemption from or lifting of detention or seal-up of relevant goods, articles or means of transport, the amount of security shall not exceed the amount of money equivalent to the value of the goods, articles or means of transport; or

(5) in the case of a security provided for exit of a person from the territory before paying a fine, surrendering illegal income or paying the amount of money equivalent to the value of the goods, articles or means of transport used in smuggling that shall be recovered in accordance with law, the amount of security shall be equivalent to the amount of the fine or illegal income or to the value of the goods, articles or means of transport used in smuggling that shall be recovered in accordance with law.

Article 15 For the handling of a security, an interested party shall submit a written application together with such materials as the truthful, legitimate and valid certificate of its property or rights, the certificate of its identification or qualifications, etc.

Article 16 The Customs shall, within five working days from the date of receipt of the documents submitted by an interested party, conduct an examination of the relevant property or rights and decide whether or not to accept the security. Where an interested party applies to provide a general security, the Customs shall, within ten working days, conduct an examination and decide whether or not to accept the security.

A security that is in conformity with the provisions shall become effective as of the date of acceptance by the Customs. In the case of a security that is not in conformity with the provisions, the Customs shall notify the interested party in writing that the security is refused and give the reasons therefor.

Article 17 Where, prior to the expiry of the time limit for the principal to fulfill

his legal obligations, the guarantor and the principal intend to alter the contents of the security for extraordinary reasons, a written application therefor and the relevant documentary evidence shall be submitted to the Customs that has accepted the security. The Customs shall, within five working days from the date of receipt of the materials submitted by the interested party, decide whether or not to approve the alteration, inform the interested party of the decision in writing and, if the Customs decides not to approve the alteration, give the reasons therefor.

Article 18 Where the principal fails to fulfill the relevant legal obligations within the prescribed time limit, the Customs may, in accordance with law, use the property or rights provided as security to offset such obligations. Where an interested party provides a security in the form of a letter of guarantee, the Customs may directly require the guarantor jointly and severally liable therefor to fulfill the obligations as a guarantor.

Even if the guarantor has fulfilled his obligations as a guarantor, the principal shall not be exempted from the obligations of going through the relevant customs formalities. The Customs shall handle such formalities for the principal in a timely manner.

Article 19 Where property or rights provided as security are insufficient to offset the principal's relevant legal obligations, the Customs shall notify the principal in writing that he shall provide another security or fulfill his legal obligations.

Article 20 Under any of the following circumstances, the Customs shall notify the interested party in writing that it shall go through the formalities for return of the property or rights provided as security:

- (1) the interested party has fulfilled the relevant legal obligations;
- (2) the interested party no longer engages in specific customs matters;
- (3) the property or rights provided as security are in surplus after being used by the Customs to offset the obligations; or
- (4) other circumstances that require the return.

Article 21 Where, without any justifiable reason, an interested party fails to go through the return formalities within three months from the date of service of a

written notice by the Customs requiring the interested party to go through the formalities for return of the property or rights provided as security, the Customs shall issue an announcement thereon.

Where, within one year from the date of issuance of an announcement by the Customs, the interested party still fails to go through the return formalities, the Customs shall, in accordance with law, sell off or cash the property or rights provided as security and turn over the proceeds so obtained to the State treasury.

Article 22 Financial institutions and other relevant units shall, in accordance with law, assist the Customs in performing its duties.

Article 23 Where the guarantor or the principal, in violation of these Regulations, provides a security by means of fraud or concealment, the Customs shall order him to continue fulfilling the legal obligations and shall impose on him a fine of not less than 5,000 yuan but not more than 50,000 yuan; if the circumstances are serious, the Customs may suspend the principal from engaging in relevant customs matters or revoke his registration for engaging in relevant customs matters.

Article 24 Where a Customs officer commits any of the following acts, he shall be given a sanction; if his act constitutes a crime, he shall be investigated for criminal liability in accordance with law:

- (1) illegally disposing of the property or rights provided as security;
- (2) illegally handling the relevant formalities for provision of a security that is not in conformity with the provisions, resulting in loss to the interests of the State;
- (3) refusing to handle the relevant formalities for provision of a security that is in conformity with the provisions; or
- (4) committing any other illegal act related to customs security.

Article 25 Where the guarantor or the principal is dissatisfied with a specific administrative act undertaken by the Customs in respect of customs security, he may, in accordance with law, apply to the Customs at the next higher level for administrative reconsideration or bring an administrative lawsuit in a people's court.

Article 26 These Regulations shall be effective as of January 1, 2011.

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