Automatic Import Licences for FIEs

——— *David Yu*

Following China's entry into the WTO, the Chinese legislature has been busy cleaning up and amending laws and regulations that are not in conformity with WTO rules. The import and export businesses of Chinese enterprises, as an important sector of the national economy, have attracted a great deal of attention both at home and abroad. On December 5 2001, the State Council promulgated the Regulations on Administration on Import and Export of Goods of the PRC (the Regulations). Effective January 1 2002, the Regulations have not only superseded and unified the unsystematic regulations and rules in this area, but have also systemized the administration of import and export of goods.

The Regulations classify imported and exported goods into three categories: prohibited, restricted and unrestricted. Both quota-schemed and licensed goods fall under the restricted category, and require prior approval from the authorities before being imported or exported. According to the Regulations, domestic importers are allowed to import unrestricted goods without prior approval, but they must complete the normal customs declaration procedure. The relevant government departments shall grant permission for import of such goods. Further, the Regulations authorize the relevant government departments to classify the import goods according to the automatic import licence administration. Following the Regulations, the Administrative Rules on the Licence for Imported Goods and the Administrative Rules on the Automatic Import Licence (collectively, the Import Licence Rules) were promulgated in late December 2001, and govern the importation of restricted goods and unrestricted goods, respectively. According to the Administrative Rules on the Automatic Import Licence, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) shall publicize the list of the goods under the automatic import licence at least 21 days before implementation, and the domestic importers shall apply for the automatic import licence before declaring the import goods at customs. Each automatic import licence is valid for six months and applicable to one custom declaration only.

On February 8 2002, MOFTEC and the General Administration of Customs (GAC) jointly promulgated the Implementation Rules on Administration of the Automatic Import Licence for Foreign-invested Enterprises (the Implementation Rules), which stipulate the requirements and procedures for foreign investment enterprises (FIEs) to apply for automatic import licences.

The Implementation Rules classify the unrestricted goods imported by FIEs as follows:

(i) equipment, spare parts and other materials classified as goods under the automatic import administration, which are investments by the FIES or are purchased by the FIEs for self-use.

(ii) goods under the automatic import administration, which are imported as materials and will be further processed and exported by the FIEs.

(iii) goods under the automatic import administration, which are imported as materials by the FIEs and will be sold in the domestic market.

Pursuant to the Implementation Rules, no automatic import licence is required for the importation of goods listed under items (i) and (ii) above. For importing goods listed under item (iii), FIEs are required to complete the application procedure for the automatic import licence before the customs declaration. The customs house will release the goods against the automatic import licence. With the automatic import licence, the FIE importers are allowed to effect the payment under the import contracts in foreign currencies.

The Implementation Rules also prescribe the qualifications for FIE applicants. In addition to complying with other legal provisions, the FIE applicants shall not commit any illegal activities in the three years prior to the application and their goods shall meet the requirements under the bilateral and multilateral trading agreements to which China is a party. Further, the Implementation Rules specify that, when applying for the automatic import licence, the FIEs shall submit these documents:

(i)the application form for the automatic import licence;

(ii)a copy of the certificate of approval of the applicant;

(iii)a copy of the business licence of the applicant;

(iv)copies of the joint venture contract or the articles of association of the applicant;

(v)a copy of the verification report on the registered capital of the applicant;

(vi)a statement on the manufacturing capacity of the applicant; and

(vii)other documents as required.

If the application documents meet the requirements set out in the Implementation Rules, the local government department on foreign investment shall issue an automatic import licence upon receiving the application form as well as the other documents; and under no circumstances shall the automatic import licence be issued later than 10 working days after receipt of the application. It shall be noted that, as a pre-condition for the application for the licence, the FIE importer shall report to the local government regarding foreign investment the import contract and the estimated arrival time of the goods.

Each automatic import licence for the FIE is valid for six months and may be renewed within the term of the licence. Unlike the licence for the Chinese-invested entities, the automatic import licence for the FIEs is valid for multiple customs declaration within the term of six months, though it shall not be used more than six times.

Although the Regulations, the Import Licence Rules and the Rules have unified and simplified the import procedure for the FIEs, it is believed that these regulations and rules will not change the administration governing the import and export of goods.