

Establishment of Sino-foreign Foreign Trading Equity Joint Ventures Tentative Procedures

(Promulgated by the Ministry of Foreign Trade and Economic Cooperation on 31 January 2003 and effective 30 days after the date of promulgation. The , approved by the State Council on 2 September 1996 and promulgated by the Ministry of Foreign Trade and Economic Cooperation on 30 September 1996, shall be simultaneously repealed.)

Article 1 These Procedures are formulated in accordance with the PRC, Foreign Trade Law, the PRC, Sino-foreign Equity Joint Venture Law and other relevant laws and regulations in order to further open China to the outside world and promote the development of China's foreign trade.

Article 2 These Procedures shall apply to the Sino-foreign foreign trading equity joint ventures (Foreign Trading Joint Ventures) established within China by foreign companies and enterprises (Foreign Investors) with Chinese companies and enterprises (Chinese Investors) that engage in foreign trade business activities.

Article 3 Foreign Trading Joint Ventures shall be limited liability companies. The proportion of the registered capital of a Foreign Trading Joint Venture contributed by the Foreign Investor shall be at least 25%.

Article 4 The establishment of a Foreign Trading Joint Venture shall comply with the following conditions:

1. The average annual trade volume with China of the Foreign Investor in the three years prior to application shall be more than US\$30 million. Where the place of registration of the Foreign Trading Joint Venture is in the central and western regions, the average annual trade volume with China of the Foreign Investor in the three years prior to application shall be more than US\$20 million.
2. The Chinese Investor shall have the right to engage in foreign trade, and its average annual import and export volume in the three years prior to application shall be more than US\$30 million. Where the place of registration of the Foreign Trading Joint Venture is in the central and western regions, the average annual import and export volume of the Chinese Investor in the three years prior to application shall be more than US\$20 million.
3. The Foreign Trading Joint Venture shall fulfill the following conditions:
 - (1) its registered capital may not be less than RMB 50 million; where the place of registration is in the central and western regions, the registered capital may not be less than RMB 30 million;
 - (2) it shall have its own name and organizational structure; and

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(3) it shall have a business premise, professionals and other necessary material conditions appropriate to its foreign trade business activities.

Article 5 A Chinese Investor applying to establish a Foreign Trading Joint Venture must provide the following documents to the local department in charge of foreign trade and economic cooperation to be reported to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC):

1. a project proposal, and a feasibility study report, joint venture contract and articles of association signed by the Chinese and foreign companies;
2. (copies of) the supporting documents in respect of the registration, creditworthiness and the legal representatives of the Chinese and foreign companies;
3. the catalogue of import and export products of the Foreign Trading Joint Venture to be established;
4. annual accounting statements of the Chinese and foreign companies for the recent three years that have been audited by an accounting firm; and
5. other documents that MOFTEC requires are submitted.

MOFTEC shall examine the materials reported by local departments, and shall render a reply and issue a foreign-invested enterprise approval certificate to enterprises that fulfill the conditions within 90 days of the date of receipt of all documents.

Article 6 After an application for the establishment of a Foreign Trading Joint Venture has been approved, the applicant shall, within one month of the date of approval, handle registration procedures with the State Administration for Industry and Commerce or its authorized local administration for industry and commerce and handle taxation registration with the tax authorities in accordance with the law.

Article 7 Foreign Investors and Chinese Investors may use monetary funds, material goods and intangible assets (including industrial property rights, proprietary technology, right to the use of a site) as capital contribution. Each joint venture party to a Foreign Trading Joint Venture shall pay up the capital contribution to which it has subscribed on time according to the relevant State provisions.

Article 8 A Foreign Trading Joint Venture shall, in accordance with the relevant State provisions, engage in the import and export of goods and technology and relevant services on its own behalf or as an agent within the scope of the business and commodities for which it has been approved,

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and engage in domestic wholesale business of the commodities imported by the joint venture.

Article 9 A Foreign Trading Joint Venture may only import or export products for import and export that are subject to State-imposed quotas and licence control after it has applied and obtained quota and licence of the relevant department-in-charge of the State Council in accordance with relevant provisions of the State. To import or export products that are subject to State-imposed quota tender invitation for import and export, a Foreign Trading Joint Venture must comply with the provisions of department-in-charge of the State Council regarding tender bidding and tender invitation for import and export of commodities.

Article 10 The foreign exchange revenue and expenditure of a Foreign Trading Joint Venture shall comply with the relevant foreign exchange control provisions of the State.

Article 11 A Foreign Trading Joint Venture shall submit taxes in accordance with State laws, regulations and rules regarding taxation. Its export goods shall be entitled to export tax refund (exemption) treatment in accordance with provisions of the relevant State laws, regulations and rules.

Article 12 A Foreign Trading Joint Venture shall comply with the provisions of State laws and regulations regarding finance, accounting and statistics, and shall submit financial, accounting and statistics statements on time to the relevant local department in charge in accordance with the set period.

Article 13 A Foreign Trading Joint Venture may apply to join an import and export chamber of commerce or foreign commercial investment enterprise association, and if it does join, it must comply with the coordination of such chamber of commerce or association.

Article 14 A Foreign Trading Joint Venture must comply with the laws and regulations of China and accept the jurisdiction of the laws and regulations of China, and the lawful rights and interests of such company shall be protected by the laws and regulations of China. Where a Foreign Trading Joint Venture violates the laws and regulations of China, the matter shall be handled in accordance with relevant laws and regulations.

Article 15 Foreign Trading Joint Ventures that are established by companies or enterprises from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan with domestic companies or enterprises shall, mutatis mutandis, be handled in accordance with these Procedures.

Article 16 If, before 11 December 2003, the proportion of the registered capital of a Foreign Trading Joint Venture contributed by the Chinese party is less than 51%, such application shall not be accepted.

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Article 17 MOFTEC shall be responsible for the interpretation of these Procedures.



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