State Council of the People's Republic of China

Order No. 331

The Technology Import and Export Administrative Regulations of the People's Republic of China, having been approved by the 46th meeting of the Standing Committee of the State Council on October 31, 2001, are hereby promulgated and shall be implemented from January 1, 2002.

Premier Zhu Rongji

December 10, 2001

Technology Import and Export Administrative Regulations of the People's Republic of China

Chapter 1  General Principles

Article 1  These Regulations are formulated in accordance with the "Foreign Trade Law of the People's Republic of China" (hereinafter referred to as the "Foreign Trade Law") and the relevant provisions of other relevant laws to standardize the administration of technology imports and exports, maintain order in technology imports and exports, and promote the development of the national economy and society.

Article 2  The term "technology imports and exports" referred to in these Regulations means the acts of transferring technology from outside the People's Republic of China into the People's Republic of China, or from inside the People's Republic of China out of the People's Republic of China, by means of trade, investment, or other forms of economic and technological cooperation.

The acts provided in the above paragraph include transfers of patent rights, transfers of patent application rights, licenses to implement patents, transfers of technology secrets, technology services and other means of technology transfer.

Article 3  The State shall implement a uniform administrative system for technology imports and exports, and maintain impartial and unrestricted order in technology imports and exports in accordance with law.

Article 4  Technology imports and exports shall comply with State industrial policy, science and technology policy and social development policy, shall benefit the promotion of the progress of our national science and technology and the development of foreign economic and technological cooperation, and shall benefit the maintenance of our national economic and technological rights and interests.

Article 5  The State permits unrestricted import and export of technology except as otherwise provided by law or administrative regulation.
**Article 6** The department in charge of foreign economics and trade under the State Council (hereinafter referred to as the State Council foreign economic and trade authority), in accordance with the Foreign Trade Law and the provisions of these Regulations, is responsible for the administration of the nation's technology exports and import matters. The departments in charge of foreign economics and trade of the People's governments of each province, autonomous region and municipality directly under the central government shall, in accordance with the authorization of the State Council foreign economic and trade authority, be responsible for the administration of technology imports and exports in its own jurisdiction.

The relevant departments under the State Council shall, in accordance with State Council regulations, perform relevant administrative obligations with respect to technology import and export projects.

**Chapter 2 Administration of Technology Imports**

**Article 7** The State encourages the import of advanced and appropriate technologies.

**Article 8** With respect to technologies under any of the circumstances listed in Articles 16 and 17 of the Foreign Trade Law, imports are prohibited or restricted.

The State Council foreign economic and trade authority in conjunction with relevant departments under the State Council will formulate, adjust and publish a catalogue of restricted or prohibited technology imports.

**Article 9** Technologies that are categorized as prohibited for import may not be imported.

**Article 10** The import of technologies categorized as restricted for import will be administered through licenses; such technologies may not be imported without a license.

**Article 11** To import a technology categorized as restricted for import, a technology import application shall be submitted with relevant documentation to the State Council foreign economic and trade authority.

Technology import projects that require approval of relevant departments shall also submit the approval documents of such relevant departments.

**Article 12** After receipt of the technology import application, the State Council foreign economic and trade authority shall conduct an examination of the application in conjunction with the relevant departments under the State Council, and make a decision as to whether or not to approve the application within thirty (30) working days after receipt of the application.

**Article 13** Upon approval of the technology import application, the State Council foreign economic and trade authority will issue a Proposal for Technology Import License.
The import operator, after obtaining a Proposal for Technology Import License, may sign a technology import contract with a foreign party.

**Article 14** After the import operator executes a technology import contract, it shall submit a copy of the technology import contract and relevant documentation to the State Council foreign economic and trade authority to apply for a Technology Import License.

The State Council foreign economic and trade authority will conduct an examination of the technology import contract with respect to its authenticity, and make a decision as to whether or not to license the technology import within ten (10) working days after receipt of the documentation provided in the above paragraph.

**Article 15** The applicant may, when submitting a technology import application to the State Council foreign economic and trade authority in accordance with Article 11 of these Regulations, also submit a copy of the executed technology import contract.

The State Council foreign economic and trade authority shall, in accordance with Articles 12 and 14 of these Regulations, conduct a combined examination of the import application and the authenticity of the technology import contract, and make a decision as to whether or not to license the technology import within forty (40) working days after receipt of the documentation provided in the above paragraph.

**Article 16** Technology imports that have been licensed will be issued a Technology Import License by the State Council foreign economic and trade authority. The technology import contract takes effect from the date the Technology Import License is issued.

**Article 17** The import of technologies categorized as unrestricted will be administered through contract registration.

Contracts to import technologies that are categorized as unrestricted take effect upon establishment in accordance with law, and registration is not a condition to the effectiveness of such contracts.

**Article 18** To import a technology categorized as unrestricted, registration shall be handled with the State Council foreign economic and trade authority and the following documentation shall be submitted:

1. Technology import contract registration application;
2. Copy of the technology import contract;
3. Identification documents showing the legal status of both parties that executed the contract.

**Article 19** The State Council foreign economic and trade authority shall conduct registration of the technology import contract within three (3) working
days after receipt of the documentation provided in Article 18 of these Regulations and issue a Technology Import Contract Registration Certificate.

Article 20  The applicant may handle foreign exchange, bank, tax, customs and other relevant procedures on the strength of a Technology Import License or Technology Import Contract Registration Certificate.

Article 21  In accordance with the provisions of these Regulations, if any change occurs in the key provisions of an approved or registered technology import contract, the license or registration procedures shall be repeated.

If the licensed or registered technology import contract is terminated, such termination shall promptly be reported to the State Council foreign economic and trade authority for the record.

Article 22  If a foreign party uses technology as an investment in establishing a foreign-invested enterprise, such technology import shall be examined or registered in accordance with the procedures for handling examination and approval of foreign-invested enterprises.

Article 23  The State Council foreign economic and trade authority and relevant departments as well as their personnel have a duty of confidentiality with respect to any trade secrets learned in the course of performing their technology import administrative duties.

Article 24  The transferor under the technology import contract must warrant that it is the lawful owner of the technology or has the right to transfer or license such technology.

If the transferee under the technology import contract uses the technology provided by the transferor in accordance with contractual provisions, and is charged with infringement by a third party, the transferee shall immediately notify the transferor; after receipt of the notice, the transferor shall assist the transferee to eliminate any impediments.

If the transferee under the technology import contract uses the technology provided by the transferor in accordance with contractual provisions, and in doing so infringes upon the lawful rights and interests of another, the transferor shall bear liability.

Article 25  The transferor under the technology import contract shall warrant that the technology provided is complete, error-free, effective and capable of achieving its intended technological purpose.

Article 26  The transferee and transferor under the technology import contract shall assume confidentiality obligations with respect to the nonpublic confidential portions of the technology provided by the transferor for the scope and period of confidentiality stipulated in the contract.
During the period of confidentiality, a party assuming confidentiality obligations shall have its confidentiality obligations terminated if the information to be kept confidential is made public through no fault of that party.

**Article 27** During the effective term of the technology import contract, the fruits of improvements to the technology belong to the improving party.

**Article 28** After expiration of the technology import contract, the technology transferor and transferee may conduct negotiations for further use of the technology in accordance with the principles of fairness and reasonableness.

**Article 29** Technology import contracts may not include the following restrictive provisions:

1. Requiring that the transferee accept ancillary conditions that are not indispensable to the technology import, including the purchase of unnecessary technologies, raw materials, products, equipment or services;

2. Requiring the transferee to pay royalties or undertake corresponding obligations for expired or invalidated patents;

3. Restricting the transferee from improving the technology provided by the transferor or using such improved technology;

4. Restricting the transferee from obtaining from alternate sources technology which is similar to or competes with that provided by the transferor;

5. Unreasonably restricting the transferee from freely choosing channels or sources for procuring its raw materials, spare parts, products or equipment;

6. Unreasonably restricting the production volume, product types or sale prices of the transferee's products;

7. Unreasonably restricting the transferee's export channels for products made by the transferee using the imported technology.

**Chapter 3  Administration of Technology Exports**

**Article 30** The State encourages the export of mature industrialized technologies.

**Article 31** With respect to technologies under any of the circumstances listed in Articles 16 and 17 of the Foreign Trade Law, exports are prohibited or restricted.

The State Council foreign economic and trade authority in conjunction with relevant departments under the State Council will formulate, adjust and publish a catalogue of restricted or prohibited technology exports.

**Article 32** Technologies that are categorized as prohibited for export may not be exported.
**Article 33** The export of technologies categorized as restricted for export will be administered through licenses; such technologies may not be exported without a license.

**Article 34** To export a technology categorized as restricted for export, a technology export application shall be submitted to the State Council foreign economic and trade authority.

**Article 35** After receipt of the technology export application, the State Council foreign economic and trade authority shall conduct an examination of the export application in conjunction with the science and technology administration department under the State Council, and make a decision as to whether or not to approve the application within thirty (30) working days after receipt of the application.

Technologies restricted for export that must undergo confidential examination by relevant departments will be handled in accordance with relevant State regulations.

**Article 36** Upon approval of the technology export application, the State Council foreign economic and trade authority will issue a Proposal for Technology Export License.

The applicant may conduct substantive negotiations with a foreign party and execute a technology export contract only after obtaining a Proposal for Technology Export License.

**Article 37** After the applicant executes a technology export contract, it shall submit the following documentation to the State Council foreign economy and trade authority to apply for a Technology Export License:

1. Proposal for Technology Export License;
2. Copy of the technology export contract;
3. List of technology materials to be exported;
4. Identification documents showing the legal status of both parties that executed the contract.

The State Council foreign economic and trade authority will conduct an examination of the technology export contract with respect to its authenticity, and make a decision as to whether or not to license the technology export within fifteen (15) working days after receipt of the documentation provided in the above paragraph.

**Article 38** Technology exports that have been licensed will be issued a Technology Export License by the State Council foreign economic and trade authority. The technology export contract takes effect from the date the Technology Export License is issued.

**Article 39** The export of technologies categorized as unrestricted will be administered through contract.
When exporting technologies that are categorized as unrestricted, the contract will take effect upon establishment in accordance with law, and registration is not a condition to the effectiveness of such contracts.

**Article 40** To export a technology categorized as unrestricted, registration shall be handled with the State Council foreign economic and trade authority and the following documentation shall be submitted:

1. Technology export contract registration application;
2. Copy of the technology export contract;
3. Identification documents showing the legal status of both parties that executed the contract.

**Article 41** The State Council foreign economic and trade authority shall conduct registration of the technology export contract within three (3) working days after receipt of the documentation provided in Article 40 of these Regulations, and issue a Technology Export Contract Registration Certificate.

**Article 42** The applicant may handle foreign exchange, bank, tax, customs and other relevant procedures on the strength of a Technology Export License or Technology Export Contract Registration Certificate.

**Article 43** In accordance with the provisions of these Regulations, if any change occurs in the key provisions of the licensed or registered technology export contract, the license application or registration procedures shall be repeated.

If the licensed or registered technology export contract is terminated, such termination shall promptly be reported to the State Council foreign economic and trade authority for the record.

**Article 44** The State Council foreign economic and trade authority and relevant departments as well as their personnel have a duty of confidentiality toward any trade secrets learned in the course of performing their technology export administrative duties.

**Article 45** Export of nuclear technology, technology relating to dual-use nuclear products, administration and control of production techniques for chemical products, military technology and other technologies subject to export controls shall be handled in accordance with the provisions of relevant administrative laws and regulations.

**Chapter 4  Legal Liability**

**Article 46** With respect to import or export of technologies categorized as prohibited for import or export, or unauthorized import or export of technologies categorized as restricted for import or export without a license, criminal liability will be pursued in accordance with the relevant criminal law provisions concerning smuggling, illegal operations, disclosure of State secrets or other crimes; if insufficient to constitute criminal sanctions, based on varying circumstances, penalties may be imposed in accordance with customs regulations, or the State
Council foreign economic and trade authority may issue a warning, confiscate illegal gains, and impose fines ranging from one to five times the illegal gains; the State Council foreign economic and trade authority may also cancel the entity's foreign trade rights.

**Article 47** With respect to unauthorized import or export of technologies categorized as restricted for import or export that exceed the permitted scope, criminal liability will be pursued in accordance with the relevant criminal law provisions concerning illegal operations or other crimes; if insufficient to constitute criminal sanctions, based on varying circumstances, penalties may be imposed in accordance with customs regulations, or the State Council foreign economic and trade authority may issue a warning, confiscate illegal gains, and impose fines ranging from one to three times the illegal gains; the State Council foreign economic and trade authority may also suspend or even cancel the entity's foreign trade rights.

**Article 48** With respect to forging, altering or selling technology import and export licenses or technology import and export registration certificates, criminal liability will be pursued in accordance with relevant criminal law provisions concerning illegal operations, forging, altering or selling of State authority documents, identification documents and seals; if insufficient to constitute criminal sanctions, penalties may be imposed in accordance with customs regulations; the State Council foreign economic and trade authority may also cancel the entity's foreign trade rights.

**Article 49** With respect to obtaining technology import and export licenses by fraudulent or other improper means, the State Council foreign economic and trade authority may revoke the technology import and export licenses and suspend or even cancel the entity's foreign trade rights.

**Article 50** With respect to obtaining technology import and export registration certificates by fraudulent or other improper means, the State Council foreign economic and trade authority may revoke the technology import and export certificates and suspend or even cancel the entity's foreign trade rights.

**Article 51** If a technology import and export administrative official in violation of the provisions of these Regulations discloses State secrets or trade secrets that the official has learned, criminal liability will be pursued in accordance with the provisions concerning State secrets offenses and other offenses relating to infringement of trade secrets; if insufficient to constitute criminal sanctions, administrative penalties may be imposed in accordance with law.

**Article 52** If a technology import and export administrative official abuses the official's authority, neglects the official's duties, uses occupational privileges to take bribes or extorts the property of others, criminal liability will be pursued in accordance with provisions concerning abuse of power, dereliction of duty, bribery or other crimes; if insufficient to constitute criminal sanctions, administrative penalties may be imposed in accordance with law.
Chapter 5  Miscellaneous

Article 53  If dissatisfied with an administrative decision by the foreign economic and trade authority concerning technology import and export approvals, licenses, registrations or administrative sanctions, one may apply for administrative review in accordance with law, and may also institute an action in the People's Court.

Article 54  If any regulations relating to the administration of technology imports and exports formulated by the State Council prior to promulgation of these Regulations are inconsistent with these Regulations, these Regulations shall prevail.

Article 55  These Regulations shall be implemented from January 1, 2002. The Regulations of the People’s Republic of China on the Administration of Technology Import Contracts promulgated by the State Council on May 24, 1985 and the Rules for the Implementation of the Regulations of the People’s Republic of China on the Administration of Technology Import Contracts approved by the State Council on December 30, 1987 and promulgated by the Ministry of Foreign Economic Relations and Trade on January 20, 1988 shall be abolished at the same time.