

HONGKONG 香港工業家

# Industrialist

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# COMMODITY TRADING RIGHTS IN CHINA

*Enterprises failing to comply with new measures introduced by the Chinese government may be sued for criminal liabilities...*

In line with the commitments made in the "Protocol on the Accession of the PRC" and the "Report of the working party on the accession of China", the Chinese government has an obligation to abolish the foreign trade approval system and liberalise the commodity and technology trading rights within three years of its accession to WTO on 11 December 2001. In fact, the Chinese government has honoured what it promised ahead of the scheduled timetable.

In April 2004, the Chinese government amended the "Foreign Trade Law" that includes the introduction of reform in the PRC foreign trade system. Before July 2004, both Chinese domestic companies and foreign investment enterprises needed to obtain administrative approval on foreign trade rights. The amended foreign trade law provides that foreign trade operators inside China are only required to follow the registration procedure with the Ministry of Commerce, removing the requirement for obtaining administrative approval. In June 2004, the Chinese government also lifted its restriction on foreign investment in distribution service.

At present, foreign investors can carry on import-export trade and provide wholesale and retail distribution services in China. In what follows is a brief introduction on the scope and contents of trading rights in China.

If a Chinese company does not have the import-export right, it does not have the customs declaration right. All production type foreign investment enterprises (FIE) acquire the import-export and declaration rights after obtaining the approval certificate and completing the customs registration. Production-type FIEs have the right to import materials for their own use and export self-produced goods. According to Decree No. 8 issued by the Ministry of Commerce this year, as of 1 June 2004 production-type FIEs can import or

export goods without having to undergo any manufacturing process, or if they just act as third party distributors by amending their scope of business activities.

International couriers or transport companies in China have the right to declare goods for their principles possessing the import-export right. However, they are not allowed to engage in import and export trading because they do not possess the trading rights. Furthermore, the declaration right is limited in that they cannot declare goods on behalf of those who are not party to the transport service agreement.

Professional customs declaration companies in China have the right to declare goods for their clients. They can declare goods to customs as independent service providers for those who have the import and export rights. However, their scope of activities is limited to provide customs declaration services. They cannot be engaged in import and export trading activities as they do not have the trading rights.

## The following table may help illustrate the differences between trading right and declaration right

	Import / export right (foreign trade rights)	Customs declaration right
<b>Foreign invested retail commercial Enterprise</b>	Yes, it can do retail business, import goods for own retail sale and export goods that are sourced domestically	Yes, but limited to the goods they buy and using their own name
<b>Production type FIE</b>	Yes, but limited to importing materials and exporting its goods	Yes, but limited to material imported for own use and export own made goods
<b>Professional declaration agency company</b>	No	Yes, provide declaration services to any party who has the foreign trade right

\* Including Sino-foreign external trading company incorporated under the "Tentative measures concerning the establishment of Sino-foreign external trading company"

Goods imported into China or exported out of China are classified into the prohibited category, the restricted category, and the freely traded category. A foreign trading right is subject to restrictions. Those who acquire the foreign trade right are not allowed to import or export goods of prohibited category, or deal with goods that are banned under the law. Goods bearing fake trademarks or firearms are two of the examples. On the other hand, the Chinese government imposes licence and quota requirements on those who import or export goods belonging to the restricted category. All Chinese companies or foreign investment enterprises having obtained the import and export rights should comply with such requirements.

investment enterprises must deal with those designated enterprises. According to the commitment China made to WTO, the restriction on the trading right system for goods subject to designated trading shall be removed within three years after China's accession to WTO. However, there will be no change in the state's goods trading system.

There is a requirement for administrative licensing regarding certain commodity trading. In the case of retail distribution of books, newspaper and magazines, the retailer must obtain administrative approval to get an operating licence from the State Administration of Press and Publication. Therefore, it is not sufficient for the foreign

investment enterprise to have a business licence alone. It must also obtain an operating licence for the specific goods. The same licensing requirement applies to the distribution of pharmaceutical products, audio-video, food, cosmetics and beauty products, etc. The Chinese commodity foreign trade system is complicated in that possessing the distribution right (licence) does not mean that one has the foreign trade rights. For example, a foreign investment enterprise that is granted the right to distribute books still has to import any book to be sold in the domestic market through state owned agents.

To sum up, the commodity trading right in the Chinese context, excluding state trading goods and goods subject to designated trading, has the following scope and contents.

First, it includes import and export rights. However, the scope of the import-export rights excludes goods under the prohibited category. In addition, goods of the restricted category are subject to licensing and quota requirements. Second, the trading right includes the declaration right, but possessing the declaration right does not necessarily mean the possession of the import-export right. Third, trading right includes the wholesale distribution rights and the retail distribution rights. But certain commodity distribution rights are subject to the requirement of administrative licensing. Possessing the distribution right for a particular item does not mean that one has the foreign trade rights. Fourth, companies and enterprises only have the power to deal with the goods in accordance with the approved scope of business activities. In the absence of any one of those rights, the company or enterprise cannot carry on with a one-stop shop commodity trading activity in China.

*This article was written by Alfred K K Chan, the owner of K K Chan & Company, Certified Public Accountants.*



*As of this month, foreign investors can set up wholly foreign owned commercial enterprises to deliver services in the capacity of wholesaler or third party distributor or commission agents.*

從今個月起，外商可以設立獨資商業企業，提供批發分銷服務或佣金代理服務。

The trading right includes distribution, which can further be divided into wholesale and retail distribution rights. As of this month, foreign investors can set up wholly foreign owned commercial enterprises to deliver services in the capacity of wholesaler or third party distributor or commission agents. However, the distribution right is not without limitation.

The scope of the commodity distribution right of the foreign invested commercial enterprise is also subject to legal restrictions. Goods in China are classified into the following categories: goods subject to state trading (such as silk and tea), goods subject to designated trading (such as steel and natural rubber), and general goods. For example, the right to wholesale distribution of processed oil is not available to foreign invested commercial enterprise until December 2006. The Chinese law prescribes that only certain companies who can meet qualification requirements have the right to trade, import and export goods subject to designated trading. The Chinese law prescribes that other Chinese domestic companies or foreign

# 中國的商品貿易權

企業未能符合中國政府頒布的新規定可被追究刑事責任。

根據《中國入世議定書》及《中國入世工作組報告書》內所作的承諾，中國政府需要在加入世貿3年內即2004年12月11日之前取消外貿權審批制度，開放貨物貿易和技術貿易的經營權。事實上，中國政府提前履行了有關承諾。

在2004年4月，中國政府修訂了《對外貿易法》，包括改革對外貿易制度。在2004年7月之前，對外貿易經營者需要通過審批才能獲得對外貿易經營權。新修訂的對外貿易法規定在2004年7月之後，對外貿易經營者只需要向商務部備案登記，就可以從事對外貿易經營業務。中國政府亦在2004年6月開放了商品分銷服務市場。

目前，外商已可以在中國從事進出口商品、批發、及零售業務。以下簡要地介紹一下中國商品貿易權的內容及範圍。

倘若一間公司不擁有進出口權，它就沒有報關權。所有生產性的外商投資企業(三資企業)在取得批准證書及辦理海關登記之後，都取得進出口權及報關權。但是

生產性三資企業的進出口權只限於進口自用原料及出口本身的製成品。根據商務部在今年頒布的8號文件，在2004年6月1日之後，生產性三資企業通過變更經營範圍，可以進出口未經加工的商品或者替第三者進出口商品。

國際快遞公司及運輸公司有權替擁有進出口權的貨主報關，但這些公司不擁有貿易權，故此，他們不可以從事進出口貿易，而且，國際快遞及運輸公司只限於替委托其運輸的貨主報關，不能替貨主之外的其他人或單位報關。

內地的專業報關公司則可以替任何擁有進出口權的公司報關，它們以獨立的服務提供者身分從事報關活動，但專業報關公司的經營範圍限於報關及提供相關服務。由於他們不擁有貿易權，因此不能從事進出口業務。

中國的進出口商品分為禁止類、限制類及自由貿易類，因此外貿權是有限制的。擁有進出口權的公司企業不允許進出口禁止類商品，或者法律規定不准進出口

的商品。例如：假冒商標商品或軍火等。另一方面，對於受進出口許可證及配額制度管理的限制類商品，進出口權的中國公司和企業必須遵守有關規定。

廣義的貿易權亦包括分銷權，分銷權又分為批發分銷權及零售分銷權。從今個月起，外商可以設立獨資商業企業，提供批發分銷服務或佣金代理服務，但有關分銷權亦有限制規定。

外商投資商業企業的商品分銷權亦有法律限制。中國的商品亦可分為國營貿易商品(例如：絲、茶葉)、指定經營管理商品(例如：鋼材及天然橡膠)以及一般商品。舉例說，在2006年12月之前，外商將不得申請取得成品油(processed oil)的批發分銷經

## 下表比較各類型公司企業在進出口權及報關權方面的分別：

	進出口權 (外貿權)	報關權
外商投資零售商業企業	可以從事批發分銷、進口自營零售商	限於自己名義買賣的商品
生產性外商投資企業	限於進口自用原料，出口自產成品	限於進口自用原料，出口自產成品
專業報關公司	沒有	專門替擁有進出口權的第三人報關

\* 包括根據《關於設立中外合資對外貿易公司暫行辦理》而設立的中外合資對外貿易公司

營權。法律規定只有一些符合有關資格的公司或企業才能買賣和進出口指定經營管理商品，其他內外資公司需要向上述公司買賣指定經營管理商品。但是，根據中國對世貿成員所作的承諾，中國政府將在入世3年內，取消對指定經營管理商品貿易權的限制。國營貿易商品的專營貿易權制度則維持不變。

一些商品的經營權須由行政機關批出

經營許可證，例如：圖書、報紙、雜誌的零售分銷。零售商須向新聞出版局申請有關經營許可證，才能分銷相關商品。外商投資企業取得工商營業執照之後，還需要取得經營許可證，才能取得特定商品的經營權。分銷藥物、音像制品、食品及化妝品等同樣需要申請經營許可證。中國的貿易管理制度十分複雜，取得商品分銷權（許可）不等於就有進出口權。例如，允許在國內分銷圖書外



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目前，外商已可以在中國從事進出口商品、批發、及零售業務。

商投資企業，還需要透過國營的中國圖書進出口公司進口所有其分銷的圖書。

總括來說，不包括國營貿易商品及指定經營管理商品的商品貿易權有以下內容和範圍：第一，除禁止類進出口商品以外的進出口權，而進出口限制類商品需符合有關許可證及配額規定；第二，報關權，但是，有報關權的公司企業不一定代

表有進出口權；第三，批發分銷權，零售分銷權，但是某些商品的批發分銷權及零售分銷權需要取得商品經營許可，擁有分銷權也不一定有該商品的進出口權；第四，公司或企業只能從事其批准經營範圍內的商品貿易活動。如果欠缺其中一部分，該公司或企業就不能在中國從事一站式的商品貿易活動。

本文由陳國基會計師事務所東主陳國基撰寫。



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