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China Tax & Investment Consultants Ltd

PRC Legal and Tax Rules on Cosmetic Products

Alfred K. K. Chan

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PRC Legal Framework

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Legal Framework

PRC Laws

1. PRC Customs Law
2. PRC Foreign Trade Law
3. PRC Law on Import & Export Commodity Inspection
4. PRC Health Law
5. PRC Product Quality Law
6. PRC Advertising Law
7. PRC Consumers' Right Protection Law
8. PRC Trademark Law




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Legal Framework

PRC Regulations and Rules

1. Regulations on the Hygiene Supervision of Cosmetic Products, promulgated by the PRC State Council, and the Detailed Implementation Rules, made by the Ministry of Health
2. Notice of the Experimental Rules Concerning the Inspection of Labels for Import and Export of Foods and Cosmetics Products, made by the AQSIQ




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Legal Framework

PRC Tax

1. PRC Regulations on Customs Duty for Import & Export of Goods
2. PRC VAT Tentative Regulations
3. PRC Consumption Tax Tentative Regulations



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PRC customs law and practices

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Classification of imported goods under PRC customs law

	Types of goods	Customs procedure
1	General goods	General
2	Bonded goods	Special
3	Tax-exempt goods	Special
4	Temporarily imported goods	Special

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Types of Customs procedures

	General customs procedure	Special customs procedure
1	None	Pre-importation approval and record filing
2	Importation formality	Importation formality *
3	None	Post-importation Supervision

* Duty and VAT not collected

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Customs formality (General goods)

1. Import Declaration
2. Documents examination
3. On the spot physical inspection
4. Levy of import duty and VAT
5. Release

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Computation of import duty and VAT (general goods)

1. Import duty rate : the applicable rate on the date the Chinese customs accept the declaration for the import goods
2. Date of exchange rate: the date for the applicable tariff rate
3. Exchange rate: the base rate the PBOC announces on the Wednesday in the third week of the preceding month

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Computation modes: Import Duty

1	CIF value x duty rate	Duty is levied by the value of import (ad valorem)
2	Import qty x rate per unit	Duty is levied by the quantity of import

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Example

1. The CIF value of a set of lipsticks (HS code 33041000) from Japan is US\$100 (exchange rate 1:8)
2. Importation of cosmetics is subject to VAT at 17%, and Consumption tax (CT) at 30%
3. Customs duty, Import VAT and CT will be computed as follows: -

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Example (continued)

1	Duty = CIF value x duty rate	(US\$100 x 8) x 14.2% = RMB113.60	Preferential tariff rate is 14.2 %. (Note 1)
2	VAT = (CIF value + duty + CT) x VAT rate	(800 + 113.60 + 391.54) x 17% = RMB221.87	Computation of CT as per below (Note 2)
3	Total = Duty, VAT and CT	113.60 + 221.87 + 391.54 = RMB727.01	

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Example (continued)

Note 1: Japan is one of the WTO member countries that are qualified for the preferential rate.

Note 2: Computation of consumption tax is as per following formula: -

Composite dutiable value
= (CIF value + duty) / (1 - consumption tax rate)
= (800 + 113.60) / (1 - 30%) = 1,305.14

Consumption tax
= composite dutiable value * consumption tax rate
= 1,305.14 x 30% = 391.54

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Computation of import duty and VAT

The import duty of goods subject to ad valorem tariff is affected by the following factors:

1. Applicable tariff schedule
2. Tariff code (classification)
3. Tariff rate
4. Exchange rate, and
5. Dutiable base

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Dutiable base (1A)

➤ Base is transaction price (the CIF price), including fees and charges borne by the buyer: -

1. Commission and brokerage
2. Cost of container to be the integrated part of the imported goods
3. Packaging charges

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Dutiable base (1B)

4. The value on the provision of materials, tooling, moulds, consumables and similar goods at no consideration or below costs; R & D expenses, design fee and related service charges
5. The royalty paid to the overseas seller for sale of imported goods in the PRC

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Dutiable base (2)

excluding: -

1. The cost of installation, testing, maintenance and technical service fees for imported goods
2. The inland freight charges and the insurance premium from port of import to final destination
3. Import duty, VAT and CT

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Non-arms length pricing (1)

Customs may use the following valuation for imported goods in the descending order: -

1. The transaction price of identical goods in the exporting country (or region)
2. The transaction price of similar goods in the exporting country (or region)

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Non-arms length pricing (2)

3. The cost of goods in country of export plus profit, transportation and insurance expenses
4. The sum of the following items: costs of materials, processing charges, the profit derived from the sale of same or similar goods in China, transport charges and insurances incurred before the arrival at the port of discharge in the PRC
5. Other reasonable valuations

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Licensing requirement for imported goods

Types	Customs procedure	Import license
General goods	General	Yes
Bonded goods	Special	No
Tax-exempt goods	Special	No
Temporarily imported goods	Special	No

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ATA Certificate

(Admission Temporaire / Temporary admission)

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ATA Certificate

- What is ATA?
- Customs Declaration
- Security for imported goods

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Who issues ATA?

1. China International Chamber of Commerce
2. Singapore International Chamber of Commerce

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Scope of ATA goods?

1. Exhibits
2. Goods or supplies used for exhibit demonstration
3. Materials used to construct the temporary booths or decorations for exhibition
4. Promotional items for exhibits including printed materials, audio-video tapes, films, VCD, slides, etc

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Hand-carry Items and Articles

Customs **won't** release following items

1. Not for self-use
2. Qty exceeding reasonable limits
3. Articles for which customs declaration is not yet completed
4. Articles for which tax is not yet paid
5. Articles not to be released under law

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Hand-carry Items for exhibition use

Use **red** exit for customs purposes

1. Make declaration for hand-carry items (articles)
2. Pay security deposit at customs
3. Must bring out exhibits when leaving PRC
4. Domestic sale requires license

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Legal Classification of Cosmetic Products

1. Cosmetic products for general use
2. Cosmetic products for special use

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Cosmetic products for general use

1. Hair care products
2. Skin care products
3. Artistic make-up products
4. Nail care products
5. Lotion & perfumes

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Cosmetic products for special use

- | | |
|----------------------------|--------------------------------|
| 1. Hair growing products | 6. Sun tan protection products |
| 2. Slimming products | 7. Deodorant products |
| 3. Breast firming products | 8. Freckle removing products |
| 4. Hair coloring products | 9. Depilatory products |
| 5. Hair wave products | |

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Administrative Licensing

1. Import license is required to import cosmetic products
2. Statutory inspection is required to import cosmetic products, including approval on product labels.
3. Manufacturers inside China must obtain "Hygiene Certificate for Cosmetic Products Manufacturing Enterprises".

Article 5, 15 and 16, PRC Regulations on Hygiene Supervision of Cosmetic Products

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Licensing Authority – Cosmetic Products

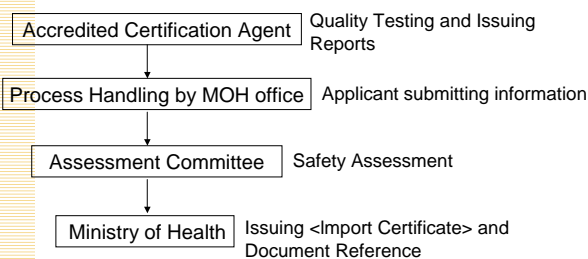
Cosmetic products	Imported	Domestically made
General use	Record filing * with MOH	MOH (Provincial office)
Special use	MOH	MOH

* Effective from 2004.8.1.

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Licensing Process for Import Certificate



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Product Labeling <商品标签>

- Legal requirement
- No pre-CIQ examination required effective from 2006.4.1
- Approval processed simultaneously with Commodity Inspection and Quarantine at time of importation
- "Customs Pass for Import Goods" <进口货物通关单> carrying the after-test remarks
- Description in Chinese language

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Product Labeling <商品标签>

What are the legal requirements?

1. CIQ required at Importation
2. Advertising
3. Product quality
4. Consumer's right protection

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Product Labeling <商品标签>

Statutory examination and testing

Scope

1. As per legal requirement and national standards
2. Testing for conformance: label contents, product functions, quantity of substance prohibited or restricted under law

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Information for Approval?

1. Application form
2. Materials and method used to prove product functions
3. Ingredients and formula
4. Product quality standards
5. Government approval to make and sell in country of manufacture
6. Sample of labels
7. Sample of goods

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China Commodity Inspection & Quarantine

- List of goods subject to statutory inspection : Animal products, plant products, Animal derived and Plant derived products
- Inspection and testing on product labels information
- Purpose: Customs Pass Certificate to secure customs release

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Product Quality

1. Product quality should bring no hazards to lives and property, and meet national or industrial standards to protect lives and property
2. Product should possess the functions that are supposed to have
3. Product quality should conform to the standards stated on the packing/labels.

Article 26, PRC Product Quality Law

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Product Quality Law and Consumers' Right Protection Law

Definition/Scope of defective goods

1. Design defects
2. Production defects
3. Information (warning) defects

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Product Quality Law

Type of legal liabilities

1. Administrative punishment
2. Civil claims for damages
3. Criminal punishment

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Advertising

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Advertising for Cosmetic Products

- Administrative Body: the SAIC
- Content approval before advertising
- Designated advertising operator (or agent)
- Advertiser should produce required documentation and certificates to advertising operator

Advertiser, Advertising Agent; Advertising Media

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Advertising for Imported Cosmetic Products

Advertiser should present the following to advertising operator or agent:

- Import license granted by (or record filing at) MOH
- Customs Pass Certificate issued by CIQ at Chinese port
- Production Approval Certificate issued by the Government at Country of Origin

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Advertising **cannot** carry following:

1. Products having medical or remedial effect;
2. Celebrity's assurance; or
3. Exaggerating in product name, manufacturing process, effectiveness, or function.

Article 14, PRC Regulations for Hygiene Supervision on Cosmetic Products

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Enforcement Agents

1. Local Administration of Industry and Commerce
2. Local Administration of CIQ
3. Local Health Administration

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Product Quality, Advertising and Consumer Protection

Relevant legal rules including:

1. Advertising Law
2. Product Quality Law
3. Consumers' Right Protection Law
4. Regulations of Hygiene Supervision of Cosmetic Products

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Liability for Tort

Burden of proof

Product quality	Defendant (manufacturer) is to prove no fault.
False or misleading advertising	Plaintiff (consumer) is to prove false advertising.

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Mode of Distribution

1. Licensing
2. Distributing Agent
3. Special counter at department stores/shopping malls
4. Specialty shops
5. Franchise
6. Direct Sales

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Commercial Presence in China

1. Representative office (exhibition and providing product information)
2. Foreign Invested Commercial Enterprise (FICE) (wholesale and retail distribution w.e.f 11th December 2004)
3. FIE (production enterprise)

Evaluations of different options: capital requirement; foreign trade right; distribution rights; legal compliance; credit risk for receivables

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Scope of business - FICE

MOC Administrative Order No. 8 (2004): -

	Retail distribution	Wholesale distribution
1	Merchandise goods retailing	Merchandise goods wholesaling
2	Imports of merchandise goods on the list of own trading items	Commission agent (except for auctioneering)
3	Sourcing domestic goods for export	Import and export of merchandise goods
4	Other related subordinated services	Other related subordinated services

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Thank You.

E-mail: alfred@china-tax.net

Website: www.china-tax.net

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