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Food and Agricultural Import Regulations and Standards

Copyright Law Implementation Regulation

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Report Highlights:

This is an UNOFFICIAL English translation of the People's Republic of China

***Copyright Law Implementation Regulation* and should be used as a guide only.**

Exporters should carefully discuss regulations and their application with Chinese importers to ensure that their interpretation of the regulation is accurate.

Includes PSD changes: No
Includes Trade Matrix: No
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This report was prepared by the Office of Agricultural Affairs of the USDA/Foreign Agricultural Service in Beijing, People's Republic of China for U.S. exporters of domestic food and agricultural products. While every possible care was taken in the preparation of this report, information provided may not be completely accurate either because policies have changed since its preparation, or because clear and consistent information about these policies was not available. It is highly recommended that U.S. exporters verify the full set of import requirements with their foreign customers, who are normally best equipped to research such matters with local authorities, before any goods are shipped. FINAL IMPORT APPROVAL OF ANY PRODUCT IS SUBJECT TO THE IMPORTING COUNTRY'S RULES AND REGULATIONS AS INTERPRETED BY BORDER OFFICIALS AT THE TIME OF PRODUCT ENTRY.

Summary

The document is an Unofficial translation of China's *Copyright Law Implementation Regulations*. The Implementation Regulations provide procedural measures that follow China's *Copyright Law*. The *Copyright Law* can be viewed at the web site: "<http://www.qis.net/chinalaw>". In March 1992, China established bilateral copyright relations with the U.S. and in October 1992 acceded to both the Berne Convention and the Universal Copyright Convention. The Copyright Administrative Department of the State Council has statutory authority over this regulation.

Copyright Law Implementation Regulation

Chapter One: General Provisions

Article 1. These Implementation Regulations are formulated in accordance with Article 54 of the Copyright Law of the People's Republic of China (hereinafter referred to as "the Copyright Law").

Article 2. The term "works" as used in the Copyright Law includes original intellectual material in a literary, artistic, or scientific medium that can be reproduced in a tangible form.

Article 3. The term "creation" as used in the Copyright Law includes direct intellectual activities that creates a literary, artistic, or scientific work. Any organizational work, consultation material support, or other auxiliary services offered during the creation of a work shall not be deemed a creation.

Article 4. For the purposes of the Copyright Law and these Regulations, the following expressions concerning works shall have the assigned meanings:

1. "written works" includes works expressed in written form; such as novels, poems, essays, and theses;
2. "oral works" includes works that are created in spoken form and have not been fixed on any material carrier; such as impromptu speeches, lectures, and court debates;
3. "musical works" includes symphonic works and songs, with or without accompanying words, that can be vocalized or performed;
4. "dramatic works" includes dramas, operas, and local traditional operas that are for stage performance;
5. "quyi works" includes works as "xiang shan" (cross talk), "kuaishu" (clapper talk), "dagu" (ballad singing with drum accompaniment), and "pingshu" (story telling based on classical novels), that is for performance and uses recitation, singing, or both;
6. "choreographic works" includes works expressed in successive body movements, gestures, and facial movements;
7. "fine arts" includes two or three dimensional works created in lines, colors, or other media that apply aesthetic effect, such as painting, calligraphy, sculpture, or architecture;

8. "photographic works" includes artistic works created by recording object images on light sensitive material with the aid of devices;
9. "cinematographic, television, and video works" includes works that are recorded on material consisting of a series of images, with or without accompanying sound, and that can be projected or broadcast with the aid of suitable devices;
10. "engineering designs and product designs, and their descriptions" means drawings designed for the purpose of actual construction and manufacturing, and the description contained in the said drawings;
11. "maps, diagram sketches, and other graphic works" includes two or three dimensional works showing geographical phenomena or demonstrating the fundamentals or the structure of a thing or an object, such as geographical maps, circuit plans, or anatomical drawings.

Article 5. For the purposes of the Copyright Law and these Regulations, the following expressions concerning modes of exploitation of works shall have assigned meanings:

1. "reproduction" means the act of producing one or more copies of a work by printing, photocopying, copying, lithographing, making a sound recording or video recording, duplicating a photographic work, or by other means;
2. "performance" means the public presentation of a work by performing music or drama, reciting a poem, or doing similar acts through vocal sound, facial movements and body movements, directly or with the aid of technical devices;
3. "broadcasting" means the communication of works through wireless radio waves or cable television system;
4. "exhibition" means the public display of the original copies or reproductions of works of fine arts and photograph;
5. "distribution" means providing copies of a work to the public through selling, renting or other means, insofar as the said number of copies satisfy the reasonable needs of the public;
6. "publication" means the public distribution of copies of the edited version of a work;
7. "the making of cinematographic, television or video works" means the creation for the first time of a work on a certain carrier by way of cinematographic production or similar means. The mere mechanical recording of a performance or scenery shall not be regarded as the making of the above mentioned works;
8. "adaptation" means the creation of new works on the basis of preexisting ones by changing the original forms of expression or the purpose;
9. "translation" means converting the language of a work into another language;
10. "annotation" means the explanation of the characters, words, and sentences used in a written work;
11. "compilation" means the creation of a work by assembling a number of selected preexisting works, in whole or in part, according to an arrangement designed for a specific purpose;
12. "arrangement" means re-editing pre-existing written works or materials that are in a fragmented and poorly ordered state so as to turn them into a systematic and orderly format, such as the glossing and repairing ancient classics.

Article 6. For the purposes of the Copyright Law and these Regulations, the following expressions shall have the assigned meanings:

1. "news on current events" means the facts or events conveyed by newspapers, periodicals, radio, and television programs;
2. "sound recordings" means the original recording of any sound;
3. "video recordings" means the original recording of a connected series of related images, with or without

- accompanying sounds; other than cinematographic and television and video works;
4. "radio and television broadcasts" means the programs communicated by a radio or television station by means of diffusing signals carrying sounds, images, or both;
 5. "producer of sound recordings" means a person who makes sound recordings;
 6. "producer of video recordings" means a person who makes video recordings;
 7. "performer" means an actor or any other person who performs literary and artistic works.

Chapter Two: Copyright Administrative Authorities

Article 7. The National Copyright Administration is the copyright administration department under the State Council that shall be responsible for the nationwide effort for the administration of copyrights. Its main functions are:

1. to implement copyright related laws and regulations, and to formulate measures in relation to copyright administration;
2. to investigate and handle cases of copyright infringement that are of nationwide scale;
3. to approve and establish collective administrative organs for copyright, foreign related copyright agencies, arbitration agencies for disputes of copyright contracts, and to supervise and guide their work;
4. to be in charge of the foreign related copyright administration;
5. to administer copyrights when the State is the owner;
6. to provide guidance for the work of local copyright administration departments ;
7. to discharge other duties assigned by the State Council in relation to copyright administration.

Article 8. The copyright administration departments under the local people's governments shall be in charge of the copyright administration within their respective administrative areas, whose functions shall be determined respectively by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

Chapter Three: Ownership and Exercise of Copyright

Section One: Ownership of Copyright

Article 9. Unless otherwise provided by law, copyright of a work shall belong to the citizen who has created the work, or the legal entity or an entity without legal personality which is deemed as the author of the work.

A legal entity must be in conformity with the conditions laid down by the General Principles of Civil Law of the People's Republic of China. Registered social institutions and economic organizations which do not meet the conditions of legal entities, and the relatively independent constituent departments forming a legal entity are entities without legal personality.

Article 10. Persons who have glossed or rearranged others' preexisting works shall enjoy the copyright in the works thus created, but shall not be entitled to copyright in the original works and shall not prevent other persons from glossing or rearranging the same preexisting works.

Article 11. Where coauthors fail to reach an agreement through consultation on the exercise of copyright in a joint work which cannot be used separately, any party may not prevent the other party from

exercising the said copyright without legitimate reasons.

Article 12. In the case of large size compilation works in the form of encyclopedias, dictionaries, textbooks, photo books or the like, the copyright in such works as a whole shall belong to the legal entities or entities without legal personality which have sponsored the creation, provided financial aid or materials for the creation and bear the responsibilities in relation to the said works.

Article 13. Where the copyright owner has authorized others to make cinematographic, television or video works based on his works, it is deemed that he has permitted them to make necessary alteration of his works, insofar as such alteration does not distort or mutilate the original work.

Article 14. Where copyright in a work created in the course of employment belongs to the author, the author may, in the case that the entity to which he belongs has not exploited the work in the scope of its professional activities within two years after the completion of the work, request the said entity to permit a third party to exploit the work in the same manner as the entity may have, the said entity may not refuse the request, unless it has legitimate reasons.

Remuneration obtained from the use of a work by a third party permitted by the author within two years after the creation of the work, with the consent of the entity to which he belongs and used in the same manner as the entity may have shall be divided between the author and the entity according to agreed proportions .

After the expiry of the period of two years after the completion of a work, the entity may continue to exploit the work within the scope of its professional activities.

The duration of two years period after the completion of a work shall be calculated from the date on which the work is submitted to the entity.

Article 15. The material and technical resources mentioned in Item (1), second paragraph of Article 16 of the Copyright Law shall mean the funds, equipments or materials provided exclusively for the creation of a work.

Article 16. In the case of a work of an unidentified author, the copyright, except the right of authorship shall be exercised by the lawful holder of the original copy of the work. Where the author has been identified, the copyright shall be exercised by the author or his heir in title.

Article 17. The provisions in Article 18 of the Copyright Law, which reads that the transfer of ownership of the original copy of a work of fine arts or other works shall not be deemed to include the transfer of copyright in such work, is applicable to any work of which the ownership of the original copy can be transferred.

Section Two: Copyright Inheritance

Article 18. Inheritance of property rights contained in copyright shall be executed in accordance with the Law of Inheritance.

Article 19. In the case where one of the coauthors of a work of joint authorship dies without heir in title or other named beneficiary, the right of exploitation and right to remuneration he enjoyed in the work shall be exercised

by the other co-authors.

Article 20. The right of authorship, right of revision and right of integrity shall, after the death of the author, be protected by the heir in title and other named beneficiary. In the absence of an heir in title or other named beneficiary, the right of authorship, the right of revision and the right of integrity shall be protected by copyright administration departments.

Article 21. Copyright enjoyed by the State shall be exercised by the copyright administration departments on behalf of the State.

Article 22. In the case of posthumous work, the right of publication may be exercised by the author's heir in title or other named beneficiary within a period of fifty years. unless the author had expressly stated otherwise. In the absence of an heir in title or other named beneficiary, the said right shall be exercised by lawful holder of the original copy of the work.

Section Three: Acquisition of Copyright and Calculation of the Term of Protection

Article 23. Copyright shall occur on the date when a work is created and shall be protected under the Copyright Law.

Article 24. In the case of a work of an unidentified author, the term of protection in relation to the right of exploitation and the right to remuneration shall be fifty years ending on December 31 of the fiftieth year after the first publication of the work. Article 21 of the Copyright Law shall be applicable after the author of the work has been identified.

Article 25. In the case of a work of a foreigner first published in the territory of China, the term of protection shall be calculated from the date of the first publication of the work.

The first publication of a work of a foreigner in the territory of China mentioned in the second paragraph of Article 2 of the Copyright Law refers to the publication of an unpublished work of foreigner for the first time in the territory of China by lawful means.

Where a foreigner's work first published outside China is published in China within 30 days thereafter, it shall be deemed first published in the territory of China.

Unpublished works of foreigners. if their authorized adaptations or translations are first published in China, shall be deemed first published in the territory of China.

Section Four: Limitations on Rights

Article 26. A published work as mentioned in the Copyright Law refer to a work which has been made available by the copyright owner to the public by means as stipulated in the Copyright Law.

Article 27. The following conditions have to be conformed with for an act to be deemed appropriate quotation of published works by others, as mentioned in Article 22, Item (2) of the Copyright Law:

1. the quotation is made solely for the purpose of introduction to. or comment on, a work or

- demonstration of a point;
- 2. the quotation shall not form a major or substantial part of the work of the quoter;
- 3. the interests of the copyright owner of the work being quoted shall not be prejudiced.

Article 28. The provisions of Article 22, Item (3) of the Copyright Law refer to unavoidable inclusion of published works as is justified by the purpose of reporting current events.

Article 29. The use of published works of other persons in accordance with the provisions of Article 22. Items (6) and (7) of the Copyright Law shall not harm the normal exploitation of the works concerned and shall not unreasonably prejudice the lawful rights and interests of the copyright owners.

Article 30. Where a published work is performed in accordance with the provisions of Article 22. Item (9) of the Copyright Law, no fees shall be charged on the audience and no payments shall be made to the performers.

Article 31. The provisions of Article 22. Item (11) of the Copyright Law shall be applicable only to the works originally created in the language of the Han nationality.

Chapter Four: Copyright Licensing Contracts

Article 32. The contracts with copyright owners and the license obtained for using their works shall be made in written form, except in cases where works are to be published by newspapers or periodicals.

Article 33. In default of a clear indication in a contract in relation to the grant of exclusive right to use, only a nonexclusive right to use by the licensee shall be granted, unless the Copyright Law stipulates otherwise.

Article 34. The provision of standard forms of various copyright licensing contracts shall be the responsibility of the National Copyright Administration.

Article 35. The person who has obtained the exclusive right in relation to the use in a certain way of a work shall have the right to prevent any other person, including the copyright owner, from using the work in the same way. However, the sub-licensing of the same right to a third party shall be subject to permission by the copyright owner, unless the contract stipulates otherwise.

Chapter Five: Exercise of and Limitations on Rights Relating to Copyright

Article 36. Rights relating to copyright, as mentioned in the Copyright Law and these Regulations, mean the right enjoyed by publishers in their publications, the right enjoyed by performers in their performances, the right enjoyed by producers of audio and video recordings in their products and the right enjoyed by radio and television stations in their broadcasts.

Article 37. Publishers, performers, producers of audio and video recordings and radio and television stations, in the course of exercising their rights, shall not prejudice the rights of the copyright owners of the works being used and of the original work.

Article 38. Publishers shall enjoy exclusive right of exploitation in the typographical design of the books, newspapers and periodicals which they have published.

Article 39. In accordance with Article 30 of the Copyright Law, the exclusive right of publisher to publish a work in its original language and in the form of original edition, revised version or abridged version shall, within the term of validity of and the domain of execution defined by the contract, be protected by law.

Article 40. In the case where a manuscript is submitted to a publisher on the author's own initiative, the publisher shall, within six months, notify the author whether the work will be published or not. In case of acceptance, a contract shall be signed: in case of refusal, a timely notification shall be sent to the author. Where no notification is served or no contract is signed, the author may, upon expiry of six months, demand that the manuscript be returned and financial compensation be made. The duration of six months shall be calculated from the date of receipt of the manuscript by the publishers.

Article 41. The provisions of Articles 29, 30, 31 and 33 of the Copyright Law shall not be applicable where the cost of publication of a work is borne by the copyright owner.

Article 42. The state of stocks being exhausted in relation to a work as mentioned in Article 31 of the Copyright Law shall be established if two successive subscription forms mailed by the copyright owner to the publisher fail to receive any reply within six months.

Article 43. Where a copyright owner intends to declare that reprinting or excerpting is not permitted in accordance with the second paragraph of Article 32 of the Copyright Law, the copyright owner is required to append that declaration to the work when it is first published in a newspaper or a periodical.

Article 44. No time limit shall be set on the term of protection in relation to the rights provided for in Article 36, Items (1) and (2) of the Copyright Law. In cases when the term of protection in relation to the right for remuneration which the performers enjoyed in accordance with the second paragraph of Article 39 and the third paragraph of Article 42 of the Copyright Law, the first paragraph of Article 39 and the second paragraph of Article 42 of the Copyright Law shall apply.

Article 45. In accordance with Article 35 of the Copyright Law, a performer shall pay remuneration to the copyright owner through the organizer of the performance.

Article 46. Performance by foreign performers in the territory of China shall be protected by the Copyright Law.

Article 47. Audio and video recordings produced and distributed in the territory of China by foreign producers shall be protected by the Copyright Law.

Article 48. Where a copyright owner intends to declare that the performance, recording or making broadcasts of his work is not permitted in accordance with the second paragraph of Article 35, the first paragraph of Article 37 and the second paragraph of Article 40 of the Copyright Law, the copyright owner is required to do that when his work is published, or have his declaration carried in the copyright bulletin issued by the National Copyright Administration.

Article 49. To use published works of other persons in accordance with the second paragraph of Article 32, the second paragraph of Article 35, the first paragraph of Article 37 and the second paragraph of Article 40 of the Copyright Law, the user shall pay remuneration to the copyright owner. In cases

where the copyright owner is not identifiable or the address of the copyright owner is not available, the remuneration payable shall be remitted, within one month, to an agency designated by the National Copyright Administration for further transfer to the due copyright owner.

Chapter Six: Administrative Sanctions

Article 50. Infringements against copyright enumerated in Article 46 of the Copyright Law shall be liable to the administrative sanctions to be imposed by copyright administration departments in the form of warning, injunction in relation to production and distribution of infringing copies, confiscation of unlawful gains and seizure of infringing copies and equipments used for making infringing copies. as well as a fine.

Article 51. The amount of a fine to be imposed for infringements against copyright enumerated in Article 46 of the Copyright Law shall be, depending on the seriousness of each of the cases, as follows:

1. an infringement as mentioned in Article 46, Item (1) of the Copyright Law shall be liable to a fine of 100 to 5,000 yuan (RMB);
2. an infringement as mentioned in Article 46, Items (2), (3), (4), (5) and (6) of the Copyright Law shall be liable to a fine of 10,000 to 100,000 yuan (RMB), or an amount of two to five times as much as the prices in total;
3. an infringement as mentioned in Article 46, Item (7) of the Copyright Law shall be liable to a fine of 1,000 to 50,000 yuan (RMB).

Article 52. Copyright administration departments under the local people's governments shall be responsible for investigating and handling the infringements against copyright enumerated in Article 46 of the Copyright Law within their respective administrative areas. The National Copyright Administration shall investigate and handle the following infringements against copyright enumerated in Article 46 of the Copyright Law:

1. infringements against copyright that are of nationwide scale;
2. infringements against copyright where a foreign party is involved;
3. infringements against copyright that the investigation and handling of which are deemed to be the responsibility of the National Copyright Administration.

Article 53. When exercising its right to impose administrative sanctions, a copyright administration department may order the infringer to compensate the infringed party for the suffered loss.

Chapter Seven: Supplementary Provisions

Article 54. Copyright owners may exercise their copyrights by way of collective administration.

Article 55. The National Copyright Administration shall be responsible for interpretation of these Regulations.

Article 56. These Regulations shall be effective from June 1, 1991.