

Administrative Provisions on Seizure and Detainment for Entry-Exit Inspection and Quarantine

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Order of the General Administration of Quality Supervision, Inspection and Quarantine

(No.108)

The Administrative Provisions on Seizure and Detainment for Entry-Exit Inspection and Quarantine, which were deliberated and adopted at the executive meeting of the General Administration of Quality Supervision, Inspection and Quarantine on May 30, 2008, are hereby promulgated, and shall come into force on October 1, 2008.

Director-general: Li Changjiang

June 25, 2008

Administrative Provisions on Seizure and Detainment for Entry-Exit Inspection and Quarantine

Chapter I General Provisions

Article 1 To regulate the seizure and detainment for entry-exit inspection and quarantine, protect the state interests, public interests and legitimate rights and interests of citizens, legal persons and other organizations, and ensure the inspection and quarantine organs to lawfully perform their functions, these Provisions are formulated in accordance with the Law of the People's Republic of China on Import and Export Commodity Inspection and its implementing regulations, the Law of the People's Republic of China on the Entry-Exit Animal and Plant Quarantine and its implementing regulations, the Food Hygiene Law of the People's Republic of China and the Special Provisions of the State Council on Strengthening the Safety Supervision and Management of Food and Other Products.

Article 2 The seizure or detainment as mentioned in these Provisions refers to the examination, sealing up, lien or any other administrative compulsory measure taken by an entry-exit inspection and quarantine organ according to law.

Article 3 The General Administration of Quality Supervision, Inspection and Quarantine ("AQSIQ") shall be responsible for the national management, supervision and inspection of the seizure and detainment for entry-exit inspection and quarantine.

The entry-exit inspection and quarantine organs ("inspection and quarantine organs") set up by the AQSIQ across China shall be responsible for the implementation of seizure and detainment.

Article 4 The inspection and quarantine organs shall properly implement seizure or detainment on the principle of minimum damage to the rights and interests of the parties.

Article 5 Any citizen, legal person or other organization shall enjoy the right of statement and right of defense in respect of seizure or detainment implemented by an inspection and quarantine organ; shall enjoy the right to legally apply for administrative reconsideration or file an administrative lawsuit against seizure or detainment implemented by an inspection and quarantine organ; and shall enjoy the right to legally claim compensation for damages caused by seizure or detainment illegally implemented by an inspection and quarantine organ.

Chapter II Scope of Application and Jurisdiction

Article 6 An inspection and quarantine organ may implement seizure or detainment under any of the following circumstances:

- (1). Upon documentary examination, on-site inspection, sensory examination or primary testing, there is evidence that the import or export commodities subject to statutory inspection are involved in a failure to comply with an item of protection of personal or property safety, health or environment;
- (2). Upon spot test, the import or export commodities not subject to statutory inspection are involved in a failure to comply with an item of protection of personal or property safety, health or environment;
- (3). The import or export foodstuffs, edible agricultural products or other products related to the personal health and life safety, which do not conform to the legal requirements, the illegally-used raw materials, supplementary materials, additives and agricultural input, and the tools and equipment used in the illegal production;
- (4). There exists any serious hidden risk which endangers the personal health and life safety at the production or operation premises of the import or export foodstuffs, edible agricultural products and other products related to the personal health and life safety; or
- (5). There exists any contract, negotiable instrument, account book or other relevant material in respect of an illegal act concerning the import or export foodstuffs, edible agricultural products or other products related to the personal health and life safety.

Where an inspection and quarantine organ considers that seizure or detainment shall be implemented, but the seizure or detainment is subject to the customs supervision or has been implemented by any other administrative organ, the inspection and quarantine organ shall suspend the implementation of the seizure or detainment, and timely notify in writing the customs or other administrative organ implementing the seizure or detainment of offering necessary assistance.

Article 7 Generally, the seizure or detainment shall be implemented by the inspection and quarantine organ located at the place where an illegal act occurs on the principle of territorial jurisdiction.

Where it is necessary for an inspection and quarantine organ to implement non-local seizure or detainment, the inspection and quarantine organ shall timely notify the non-local inspection and quarantine organ, and the non-local inspection and quarantine organ shall assist.

Where there is any dispute over jurisdiction between two or more inspection and quarantine organs, they shall report it to their joint superior for designation of jurisdiction.

Chapter III Procedures

Article 8 The procedures for implementing seizure or detainment shall include: gathering of evidential materials, reporting, examination and approval, decision, service and implementation.

Article 9 Before implementing seizure or detainment, an inspection and quarantine organ shall do a good job in gathering evidence, and verify the gathered evidence.

Article 10 The evidential materials for seizure or detainment shall generally include: on-site record sheet, on-site notes, various documents provided by the party concerned, samples taken and audiovisual materials recorded on spot, laboratory test records and work records, certificate of inspection and quarantine results and other evidential materials.

Article 11 Before implementing seizure or detainment, the person in charge of an inspection and quarantine organ shall be briefed in writing or verbally, and an Examination and Approval Form for

Implementing Seizure or Detainment shall be completed. The seizure or detainment may be implemented only upon approval of the person in charge of the inspection and quarantine organ. Where the case is serious or the seizure or detainment of property in a large amount needs to be implemented, the person in charge of an inspection and quarantine organ shall decide on it through collective discussion.

Article 12 In case of emergency or serious results possibly from the non-implementation of seizure or detainment, an inspection and quarantine organ may make a decision on seizure or detainment on spot on the principle of legality, timeliness, suitability, convenience and non-aggravation of the burden on the party concerned, and organize or supervise the implementation.

Article 13 Where seizure or detainment is implemented on spot, the inspection and quarantine law enforcement officers shall timely make up the relevant formalities.

Article 14 A written Decision on Seizure or Detainment shall be made for the implementation of seizure or detainment. The written Decision on Seizure or Detainment shall expressly state the following matters:

- (1). Name and address of the party concerned;
- (2). Facts, reasons and basis for the seizure or detainment measure;
- (3). Name, quantity and duration of the seized or detained property;
- (4). Ways and time limits for applying for administrative reconsideration or filing an administrative lawsuit;
- (5). Name and seal of the administrative organ; and
- (6). Signatures of the administrative law enforcement officers and date.

Article 15 The written Decision on Seizure or Detainment for Inspection and Quarantine shall be timely served on the party concerned, and the party concerned shall sign or seal the Acknowledgement of Service and note the date of service thereon. Where the party concerned refuses to sign or seal it, the refusal shall be noted thereon.

Article 16 The implementation of seizure or detainment shall satisfy the following requirements:

- (1). Implementing seizure or detainment by two or more administrative law enforcement officers;
- (2). Showing the law enforcement identity certificates;
- (3). Informing the party on spot of the reasons and basis for implementing seizure or detainment and the rights legally enjoyed by the party concerned;
- (4). Making an on-site record and, if necessary, taking photos or videos on spot. The content of the on-site record shall include: the commencing and ending time of implementation of seizure or detainment, place of implementation, status after seizure or detainment, etc.;
- (5). Making a list of seized or detained property. The seizure or detainment list, which is made in triplicate, shall be held by the party concerned, keeper of property and inspection and quarantine organ respectively;
- (6). The on-site record and the list of seized or detained property shall be signed or sealed by the party concerned and the administrative law enforcement officers for inspection and quarantine, and where

the party concerned is absent or refuses to sign or seal the same, a witness shall be invited to the scene and told of the situation, which shall be noted; where the witness refuses to sign or seal the same, the administrative law enforcement officers for inspection and quarantine shall make a note; and

(7). Pasting a seal or taking other measures to explicitly indicate that the inspection and quarantine organ has implemented the seizure or detainment.

After seizure or detainment is implemented, if the issuance of a relevant certificate of inspection and quarantine is necessary, an inspection and quarantine organ shall issue a relevant certificate according to legal provisions.

Article 17 An inspection and quarantine organ shall legally make a decision within 30 days on handling the seized or detained import or export commodities or other property (premises). Where the circumstances are complicated, with the approval of the person in charge of the inspection and quarantine organ, the inspection and quarantine organ may extend the time limit for no more than 30 days. With respect to the commodities or other property with a shorter period of quality guarantee, an inspection and quarantine organ shall make a handling decision within 7 days. If an administrative punishment is involved, the time limit shall be subject to the relevant legal provisions. Where the time limit is otherwise provided for by a law, such a law shall apply.

Where an inspection or technical appraisal is necessary, the time of inspection or technical appraisal shall not be counted in the time limit for seizure or detainment. The period of inspection or technical appraisal shall be clear and told to the party concerned. The expenses for inspection or technical appraisal shall be assumed by an inspection and quarantine organ.

Article 18 An inspection and quarantine organ shall properly keep and shall not use, damage or destroy the seized or detained import and export commodities or other property (premises); where any loss is caused due to improper safekeeping, an inspection and quarantine organ shall make compensation unless the loss is caused by a force majeure.

Article 19 An inspection and quarantine organ may designate the party concerned to keep or authorize a third party to keep the seized import and export goods or other property (premises), and the party concerned or the authorized third party shall not damage, destroy or transfer the same. The party concerned shall assume the compensatory liability for any loss caused for reasons of the party concerned; the authorizing inspection and quarantine organ and the authorized third party shall jointly and severally assume the compensatory liability for any loss caused for reasons of the authorized third party.

Article 20 An inspection and quarantine organ shall immediately discharge the seizure or detainment of the import and export commodities which, after verification, are not involved in a failure to comply with an item of protection of personal or property safety, health or environment or any other property (premises) which no longer requires the implementation of seizure or detainment, and make a Decision on Discharge of Seizure or Detainment and a Property List of Discharged of Seizure or Detainment, which shall be served on the party concerned.

Article 21 Where an inspection and quarantine organ fails to make a handling decision within the period of seizure or detainment, the seizure or detainment shall be automatically discharged. The seized import and export commodities or other property shall be immediately returned to the party concerned.

Chapter VI Supervision

Article 22 Under any of the following circumstances, an inspection and quarantine organ, which implements the seizure or detainment, shall make a timely correction or be ordered by its superior inspection and quarantine organ to make a correction:

- (1). Implementing the seizure or detainment without any basis of law or regulation;
- (2). Altering the statutory means, objects, scope and conditions of seizure or detainment; or
- (3). Implementing the seizure or detainment by violating the legal procedure.

Article 23 Under any of the following circumstances, an inspection and quarantine organ, which violates these Provisions, shall make a timely correction and make compensation according to law, and if the circumstances are so serious to constitute a crime, the criminal liability shall be investigated according to law:

- (1). Illegally implementing the seizure or detainment;
- (2). Using, damaging or destroying the seized or detained property, which has caused any loss to the party concerned; or
- (3). Failing to return the detained property that shall be legally returned, which has caused any loss to the party concerned.

Article 24 Where an inspection and quarantine organ intercepts, secretly divides or secretly divides in a disguised form the seized or detained property, its superior inspection and quarantine organ or a relevant department shall recover the same. If the circumstances are so serious to constitute a crime, the criminal liability shall be investigated according to law.

Article 25 Where a functionary of an inspection and quarantine organ appropriates the seized or detained property by taking advantage of his position and the circumstances are so serious to constitute a crime, the criminal liability shall be investigated according to law.

Chapter V Supplementary Provisions

Article 26 Where it is necessary to seal up for keeping any animal or plant, animal or plant product, or any other quarantine object, which are prohibited from entry, these Provisions shall apply by analogy.

Such compulsory measures as diagnostic examination applicable to entry-exit passengers shall not be covered by these Provisions, and shall be otherwise provided for by the AQSIQ.

Article 27 The document formats of seizure and detainment for inspection and quarantine shall be uniformly formulated by the AQSIQ and published on its website.

Article 28 An inspection and quarantine organ shall create and properly keep the files of seizure and detainment, and the files shall be kept for at least 2 years.

Article 29 The ASSIQ shall be responsible for the interpretation of these Provisions.

Article 30 These Provisions shall come into force on October 1, 2008.