

Administrative Measures on Fair Trading between Retailers and Suppliers

Ministry of Commerce, National Development and Reform Commission, Ministry of Public Security, State Administration of Taxation and State Administration for Industry and Commerce Order No. 2006 (17)

13 October 2006

[Article 1](#)

These Measures are formulated for the purposes of standardising trading conduct between retailers and suppliers, safeguarding the order of fair trading and ensuring the legitimate rights and interests of consumers.

[Article 2](#)

These Measures shall apply to retailers and suppliers engaging in related trading activities in the People's Republic of China.

[Article 3](#)

A retailer referred to in these Measures shall mean an enterprise, including its branches, lawfully registered with the industrial and commercial administration authorities, which engages in direct sale of goods to consumers with an annual turnover of RMB10 million (the turnover shall include the turnover of chain stores where the enterprise engages in chain operations).

A supplier referred to in these Measures shall mean an enterprise, including its branches, an individual business owner, including a manufacturer, a distributor and any other intermediary, which provides goods and the corresponding services to a retailer.

[Article 4](#)

Trade between a retailer and a supplier must comply with the principles of legitimacy, voluntariness, fairness, honesty and trustworthiness, without obstruction to the market trading order of fair competition or infringement to the lawful rights and interests of the trading parties.

[Article 5](#)

Retailers and suppliers are encouraged to use standard form contracts recommended by the commerce administration authorities and industrial and commercial administration authorities when trading.

[Article 6](#)

A retailer shall not abuse a dominant position to engage in any of the following unfair trading conduct:

- (1) refuse receipt of specific goods under a concluded contract of supply of specific goods with a supplier, notwithstanding the parties have agreed on the goods' exact specifications, model number, type, etc (except where responsibility is attributable to the supplier or where the retailer bears responsibility for any damage arising therefrom upon agreement by the supplier);
- (2) demand a supplier to be liable for wear and tear of goods without any prior agreement;
- (3) withdraw or remove from shelves the goods supplied by a supplier without proper reason, and such withdrawal or removal, was made without any prior agreement or breaches the conditions for withdrawal or removal, except where the retailer has withdrawn or removed a supplier's goods from shelves pursuant to laws and regulations or according to an administrative decision made by the administrative authorities pursuant to law;
- (4) compel a supplier to make an unconditional sales rebate or agree on a fixed quantity of sales as a pre-condition for sales rebate, and the subsequent demand for the sales rebate from the supplier, notwithstanding the agreed quantity of sales was not achieved; or
- (5) compel a supplier to purchase designated goods or accept designated services.

[Article 7](#)

A retailer shall not engage in any of the following anti-competitive conduct:

- (1) restrict the price of goods directly sold by a supplier to consumers and other business operators; or
- (2) restrict a supplier's supply of goods or provision of sales services to other retailers.

[Article 8](#)

Other than the following circumstances, a retailer shall not request for personnel from the supplier to be sent to the retailer's business premises to provide services:

(1) the supplier accedes to the request and the personnel sent by the supplier engages only in sales services that relate to goods supplied by the supplier;

(2) the retailer and the supplier have agreed on the job description, working hours, job duration and other terms of the personnel sent by the supplier, and the retailer bears the expenses for the transfer of personnel.

[Article 9](#)

A supplier shall have the right to refuse returned goods under any of the following circumstances:

(1) the goods returned are stained, damaged, deteriorated or expired by reason of the retailer's doing and the retailer refuses to bear any resulting loss incurred by the supplier;

(2) the retailer returns goods by reason of adjustment of inventory, transformation of business premises, change of display shelves, etc, and refuses to bear any resulting loss incurred by the supplier;

(3) the retailer purchased the goods at a low price during a promotion period and returns the remaining goods at their regular price after the promotion period is over.

[Article 10](#)

Where a retailer collects promotion service fees from a supplier, prior consent of the supplier must be sought, and the parties shall enter into a contract specifying the scope, contents and duration of the services provided; the standard, amounts, purposes and payment methods of the payable fee items; the liability of the parties in the event of default, etc.

The promotion service fee referred to in these Measures shall mean the fees collected by a retailer from a supplier pursuant to the terms under the contractual agreement for the purposes of promoting the sale of specific brands or specific types of goods of the supplier, through the provision of printed posters, promotional activities, advertising and promotion and other corresponding activities undertaken by the retailer.

[Article 11](#)

After the promotion service fee is collected by a retailer, the retailer shall provide the corresponding services to the supplier pursuant to the terms under the contractual agreement and shall not suspend services or lower service standards arbitrarily. Where service provided by the retailer is incomplete, the retailer shall return the

portion of fees for services provided to the supplier which are the incomplete.

[Article 12](#)

A retailer shall credit the collected promotion service fee into its accounts, issue an invoice to the supplier and pay tax pursuant to the provisions.

[Article 13](#)

Retailers must not overtly or covertly collect fees for any of the following expenses:

- (1) expenses associated with entering or renewing a contract;
- (2) expenses associated with the purchase of internal barcodes when the supplier has already obtained barcodes for its goods that is fit for normal use in the retailer's business premises pursuant to the relevant provisions of the State;
- (3) barcode fees from a supplier, that exceed the actual cost to the supplier that uses internal barcodes;
- (4) renovation expenses and decoration expenses not incurred specifically for the sales area of the supplier's specific goods when the shop space undergoes transformation or renovation;
- (5) expenses collected in the name of festive celebration, shop celebration, new shop opening, re-opening of business, enterprise public listing, merger, etc, when the retailer has not provided promotion services;
- (6) any other expense not directly related to the sale of goods that should be borne by the retailer, or the collection of expenses notwithstanding no services were provided.

[Article 14](#)

The retailer and supplier shall specify in the contract the term of payment according to the nature of the goods, but the agreed term of payment shall not exceed 60 days after the goods are accepted.

[Article 15](#)

Unless the contract stipulates otherwise or where the supplier has not provided the necessary documents, a retailer shall settle the accounts with the supplier promptly.

[Article 16](#)

Where a retailer engages in sale of goods in the form of a consignment, the supplier shall have the right to enquire into the sale status of goods for which payment is pending from the retailer and the retailer shall facilitate the enquiry without refusal.

[Article 17](#)

Retailers may not use any of the following circumstances as grounds to delay payment of goods to a supplier:

- (1) the supplier has failed to supply certain goods on time;
- (2) the supplier has not completed formalities for certain goods;
- (3) the goods supplied by the supplier failed to achieve the sales turnover amount determined by the retailer;
- (4) the supplier failed to renew the contract for supply of goods with the retailer;
- (5) any other reason which violates the principle of fairness.

[Article 18](#)

A supplier shall not, in the supply of goods, engage in any of the following anti-competitive conduct:

- (1) force a bundle sale of goods not ordered by a retailer;
- (2) restrict a retailer's sale of goods from other suppliers.

[Article 19](#)

The industry associations are encouraged to build commercial creditworthiness files to record and reflect the creditworthiness of retailers and suppliers accurately, promptly and fully, and guide retailers and suppliers in strengthening self-regulation and legitimate operations.

[Article 20](#)

The industry associations are encouraged to establish a settlement risk alert system on retailers' payment for goods, notify the commerce administration authorities on the list of retailers in arrears of larger amounts and longer periods of payments for goods, and alert the relevant suppliers.

[Article 21](#)

All local commerce, pricing, tax and industry and commerce administration authorities shall, supervise and administer the acts provided under these Measures within their respective scope of duties,

pursuant to the laws and regulations and these Measures. The public security department shall conduct handle and investigate all alleged crimes pursuant to the law.

The commerce administration authorities of county level and above and their relevant counterpart authorities shall conduct dynamic monitoring of fair trade and activities between retailers and suppliers, alert any risks and take prompt preventive measures.

[Article 22](#)

Any organisation or individual that violates the provisions of these Measures may report to the aforesaid authorities; the relevant authorities shall handle and investigate the matter pursuant to law upon receipt of a report.

[Article 23](#)

Where other laws and regulations provide for the violation of provisions under these Measures by retailers or suppliers, such provisions shall apply; where no provision applies, the offender shall be ordered to make correction; where there is unlawful income, a fine of not more than three times the unlawful income amount shall be imposed, subject to a maximum amount of RMB30,000; where there is no unlawful income, a fine of not more than RMB10,000 shall be imposed; and may include a public announcement.

[Article 24](#)

Where the commerce administration authorities, pricing authorities, tax authorities, industry and commerce administration authorities, etc, of county level and above discover an alleged fraud on payment of goods by a retailer to a supplier, the trail of the alleged criminal act shall be forwarded to the public security department of the locality promptly. The public security department shall promptly commence investigation and open an investigation case file for the alleged crime pursuant to law.

[Article 25](#)

All provinces, autonomous regions and centrally-administered municipalities may, in the formulation of the relevant provisions on standardising fair trading between retailers and suppliers, take into account of the actual local conditions.

[Article 26](#)

These Measures shall be effective 15 November 2006.