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This update highlights some key commercial and intellectual property developments across Mainland China, Hong Kong and the United States.

China

Comments solicited for Amendment of Standardization Law

On 22 March, the Legislative Affairs Office of the State Council released for comment an Amendment of Standardization Law (Draft for Comment) drafted by the General Administration of Quality, Inspection and Quarantine. This is the first amendment since the law came into force in 1989. Under the old law, the standards are divided into national standards, industrial standards, local standards and company standards. National, industrial and local standards are further divided into compulsory and voluntary standards. At present only the national standards are classified into compulsory standards and voluntary standards and only central government has the power to formulate national standards.

The compulsory standards will be unified by the exclusive regulation of the central government after the amendment becomes effective. This will change the current problem that the compulsory standards are too broad and even conflict with each other. It will be clearer for businesses to know what compulsory standards they should satisfy.

Specifications for Filling the Customs Declaration Form of Imports and Exports ("Specifications") has been amended

The General Administration of Customs has released amended Specifications to unify all the specifications randomly provided in different policies. New specifications for filling, such as "Country/Region of Trade" "Country/Region of Origin" "Country/Region of Final Destination" and other parts of the declaration are added. Some declaring items that are void or no longer necessary are deleted from the declaration form.

The following three items of news are about recycling of waste textiles. Textile recycling has become a hot issue in China recently.

Proposal of legal developments of textile recycling

It has been reported that, during the opening of this year's National People's Congress (NPC) and Chinese People's Political Consultative Conference (CPPCC), one of the NPC's members, GAO Dekang, who is also the Chairman of Bosideng International Holdings Ltd., made a proposal regarding the establishment of a waste textile recycling system. Statistics shows that every year China generates about 26 million tons of waste textile products, but only 14% is recycled. However, due to the insufficient supply of domestic material, the import of raw material is high, up to 65%. Therefore, it is necessary and of great potential to build a recycling system to solve this problem. He also suggested introducing Internet Plus mode when building the online platform to expedite recycling transactions, which seems to echo the **Guiding Opinions of the State Council on Actively Propelling the Internet Plus Action Plan.**

Beijing will set up a base in Hebei Province for disposal of waste textiles and 2000 recycling sites for waste clothes

It has been reported that Beijing Environment Sanitation Engineering Group Co., Ltd is engaged in establishing a disposal base of waste textiles in Hebei Province. The base will be capable of disposing of 50,000 tons of waste textiles per year and the waste textiles will be collected by setting up 2000 recycling sites in Beijing.

Zhejiang aims to build the biggest waste textile recycling base across the nation and its Fiber Inspection Bureau commenced research on recycling of waste textiles

It has been reported that Zhejiang Jiaren New Materials Co., Ltd and 浙江绿宇环保有限公司 (English name of the company cannot be found) plans to invest in the construction of the largest recycling base of waste textiles in Shaoxing, Zhejiang Province. The base is expected to recycle 600,000 tons of waste textiles per year. Zhejiang Fiber Inspection Bureau also started a research on the recycling of waste textiles in order to analyze the development and make suggestions to the government.

For more information on any of the items included for Mainland China, please feel free to call Nicholas Chan.

Hong Kong

Intellectual Property Rights - Registered Designs

The Registered Designs Ordinance (Chapter 522 of the Laws of Hong Kong) replaced the regime formerly based on the UK Designs (Protection) Ordinance and introduced an independent design regime to Hong Kong. A registrable design consists of features of shape, configuration, pattern or ornament applied to an article by an industrial process. The features must have what is known as "eye-appeal", in that the appearance of the article must be relevant to a customer's decision to buy the product. A registered design protects the outward appearance of a product and can be registered for a wide range of articles, including textiles.

A design registration is valid for an initial period of five years from the date of filing the application. The registration may be renewed for four further periods of five years, for a total of twenty five years. A design registration will prevent the unauthorised manufacture, import, use, sale or hiring of items which look the same as the registered design in Hong Kong. In deciding whether there has been infringement, one must look at whether the substance of the registered design has been taken.

Contract – Rights of Third Parties

The Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong) (the "Ordinance") came into effect on January 1, 2016 and applies to all contracts entered into after this date subject to certain specified exceptions, such as bills of exchange, covenants relating to land, and letters of credit. The Ordinance confers on a person who is not a party to a contract (i.e. a third party) the right to enforce a term of the contract if the contract expressly provides that the third party may do so or the term purports to confer a benefit on the third party. Unless the contract contains an express provision to the contrary, (1) rescission or variation of a contract that affects a third party's right will require consent of the third party; and (2) the third party may assign such third party's rights, except for a personal right, to another person.

For more information on any of the items included for Hong Kong, please feel free to call Nicholas Chan.

United States

Minimum Wage Increase - California & New York

In California, Gov. Jerry Brown will sign into law an increase in the state minimum wage from the current $10 to $15 an hour by 2022. The minimum wage will increase by $1 annually until 2022. Business with twenty five or fewer employees will have an extra year to comply with the law. Additionally, the law allows for delay in the increases in the event of an economic downturn. Opponents state the increase is "too much too fast" and does not take into account regional economic differences within the state.

In New York, Gov. Andrew Cuomo and state legislative leaders have reached an agreement to raise the minimum wage in New York City to $15 an hour by 2018. Outside of the city, increases will happen at a slower rate or will

fall under an exemption. A Wall Street Journal analysis says the increase could impact other states as previously when New York and California approved minimum wage increases in 2013, fourteen states did the same a year later.

Further information is available here.

American Manufacturing Competitiveness Act of 2016 - Proposed federal legislation

Miscellaneous tariff bills ("MTB") reform legislation from bipartisan members of the House Ways and Means Committee will introduce a new three-step process to get approval for tariff relief for production components made outside of the U.S. The proposed new procedures allow businesses to receive tariffs through MTB by petitioning the U.S. International Trade Commission ("ITC") directly, rather than going through Congress first. Businesses would first petition a request to the ITC, which would in turn issue a public report to Congress with its analysis and recommendations. Finally, the Ways and Means committee would examine the ITC's recommendations and draft a MTB proposal. Historically under the MTB process, which expired at the end of 2012, Congress would put forward specific tariff waivers, which were then vetted by the International Trade Commission. MTBs reduce or suspend duties on certain imported products not available in the United States. The primary purpose of MTBs is to reduce costs for U.S. businesses and increase the competitiveness of their products. Read the Bill here.

The Senate Finance Committee also introduced a bill to overhaul the process for businesses requesting tariff relief with the proposed measures mirroring the bill introduced in the House. The bill offers bicameral and bipartisan approach for MTBs, one that improves transparency and allows domestic firms to receive appropriate tariff relief. More information is available here.

Defend Trade Secrets Act - Federal legislation

On April 4, 2016, the U.S. Senate unanimously approved the Defend Trade Secrets Act of 2016 ("DTSA"). The DTSA will strengthen legal protections for companies' intellectual property and, for the first time ever, allow them to fight trade-secret theft in federal courts. Previously, of the four kinds of intellectual property rights - copyrights, trademarks, patents, and trade secrets - only trade secrets lacked the protection of taking legal action in federal courts. The legislation would create a uniform standard for what constitutes trade secret theft. Currently, if companies want to sue, they are relegated to state courts, where there is a patchwork of state laws. The House version of the bill has more than 120 sponsors, but the House Judiciary Committee has not yet considered it and it was not clear whether it would act in coming months.

The DTSA will be a powerful tool in protecting confidential information including manufacturing processes, formulas, computer algorithms, industrial designs, business strategies, and customer lists.

Read the Act here.

Country of Origin Labeling Requirements - CA legislation

On January 1, 2016, the amendment to California Section 17533.7 of the California Business and Professions Code became effective. The country of origin (COO) labeling requirement restricts the in-state sale of merchandise bearing the words "Made in U.S.A.," "Made in America," "U.S.A." or other similar words that signify that the item has been domestically manufactured. Under the California amendments, merchandise that is manufactured or produced in the U.S. with foreign made articles, units or parts that bears a domestic COO label can be sold in California, if the foreign parts do not constitute more than either: (1) 5% of the final wholesale value of the product; or (2) 10% of the final wholesale value of the product if the foreign parts are not available in the U.S. and the

manufacturer cannot manufacture the part at issue.

Before these amendments, merchandise sold in California could not bear domestic COO markings on its labeling or packaging if any component part was made outside the US. This standard was more stringent than the standards of every US state and those of the Federal Trade Commission (FTC), which requires that all or virtually all of a products' parts must be domestically manufactured. Although the new California amendments have provided more certainty on labeling requirements, the FTC has not quantified or provided guidance on the practical application of their "all or virtually all" standard.

Read the Bill here.

Lexmark International, Inc. v. Impression Products, Inc. - Federal Circuit-patent law

On February 12, 2016, *in Lexmark International, Inc. v. Impression Products, Inc.,* the US Court of Appeals for the Federal Circuit ruled in an en banc decision that a patentee's sale of a patented article subject to a lawful and clearly communicated restriction on the article's resale does not give the article's buyer or downstream buyers with knowledge of the restriction authority to resell the article. The court also ruled that a patentee that sells or authorizes the sale of a patented article abroad does not implicitly authorize the article's buyer to import the article for sale and use in the US.

Lexmark International, Inc. v. Impression Products, Inc., 2016 WL 559042 (Fed. Cir. Feb. 12, 2016).

Kyocera Corporation v. Hemlock Semiconductor - Michigan Court of Appeals

This decision concerned force majeure clauses in commercial contracts. Due to the Chinese government providing illegal subsidies to Chinese companies, which negatively affected prices in the global solar panel market, Kyocera Corporation sent notice to Hemlock Semiconductor that it would be exercising its rights under the force majeure clause of their purchase agreement. The force majeure clause excused failures in performance that arose out of or resulted from causes beyond such party's control, including acts of Government. However, the contract did not specify the acts or governments to be covered under the agreement. The Michigan Court of Appeals affirmed the trial court's summary judgment against Kyocera and held the company responsible for breaching contracts worth over $2 billion. The courts stated that if Kyocera wanted to protect itself from this type of liability, it should have also negotiated a clause that excused contractual performance resulting from unprofitability due to governmental market manipulation.

While this is a decision affecting Michigan case law, it is an example of why it is important to understand the risks of relying on force majeure clauses.

Kyocera Corporation v. Hemlock Semiconductor LLC, No. 327974, 2015 WL 7779299 (Mich. Ct. App. Dec. 3, 2015). Read the decision here.

Innocent Seller defense - multiple jurisdictions

Parties involved in selling or distributing a product are subject to liability for harm caused by a defect in that product (Restatement (Third) of Torts: Products Liability § 1). This includes all parties in the chain of manufacture and distribution, such as the component manufacturer, assembling manufacturer, wholesaler and retailer. However, some jurisdictions, such as Texas, Missouri, Oklahoma, and North Carolina, have enacted innocent seller statutes, which provide that a seller is not liable in a product liability action, if it: (1) did not manufacture the product; (2) was unaware of the defect; (3) could not have reasonably discovered the defect; or (4) did not change the product but merely passed it on in the chain of commerce.

Retailers/sellers in multiple states now have more defenses at their disposal and plaintiffs may find it easier to go after the manufacturer directly.

For more information on any of the items included for the US, please feel free to call Huu Nguyen or Sarah Rathke.