



DACHENG  
LAW  
OFFICES

大成律师事务所

总第四十期

# 海商海事法规信息速递

2014 年第 6 期

大成律师事务所 海事海商部



---

## 目 录

### 新法速递 NEW LAWS AND REGULATIONS WATCH.....3

海关总署发布《海关总署关于跨境贸易电子商务进出境货物、物品有关监管事宜的公告》.....	3
我国煤炭资源税改革出新政.....	5
自贸区大宗现货交易规则初定.....	7
海关总署发布关于明确进出口货物提前申报管理要求的公告.....	9
商务部出台关于促进商贸物流发展的实施意见.....	11

### 实时资讯 REAL-TIME INFORMATION.....13

李小加：沪港通望拓展至大宗商品领域.....	13
钢贸危机蔓延至大型贸易商，银监会摸底质押融资.....	15
大宗商品最怕哪种风险.....	17
中国大宗商品贸易融资边际收益下降.....	20
大宗商品贸易金融化暴露信贷风险.....	22

### 案例分析 CASE STUDY.....24

电放方式下，若没有约定必须凭托运人指示才能交付货物，承运人直接交付货物给记名收货人是否应当承担责任.....	24
--	----

### 资讯选编 INFORMATION SELECTION.....30

Chinese coal quality restrictions: a further headache for bulk importers?.....	30
--	----

### 海关总署发布《海关总署关于跨境贸易电子商务进出境货物、物品有关监管事宜的公告》

近日海关总署发布了《海关总署关于跨境贸易电子商务进出境货物、物品有关监管事宜的公告》，明确规定了通过与海关联网的电子商务平台进行跨境交易的进出境货物、物品范围，以及数据传输、企业备案、申报方式、监管要求等事项。

同时满足以下三个条件，纳入公告调整范围：一是主体上，主要包括境内通过互联网进行跨境交易的消费者、开展跨境贸易电子商务业务的境内企业、为交易提供服务的跨境贸易电子商务第三方平台；二是渠道上，仅指通过已与海关联网的电子商务平台进行的交易；三是性质上，应为跨境交易。对于未在上述条件范围内的进出境货物、物品，海关仍按照原有方式（比如一般贸易、邮件、快件等）办理通关手续。

General Administration of Customs Issued the  
Announcement of Regulation of Exporting and Importing  
Goods by Cross-border Trade via E-commerce

---

Recently General Administration of Customs issued the Announcement of Regulation of Exporting and Importing Goods by Cross-border Trade via E-commerce (“Announcement”). It clarified regulatory issues on the scope of goods (which are qualified of being imported or exported) traded via e-commerce platform linked with the Customs, and other issues on data transmission, enterprise record, declaration methods, regulatory requirements, etc.

Goods in exporting and importing trade would be regulated by the Announcement if three requirements are fulfilled. Firstly, parties of the trade mainly contain the purchasers in cross-border trade via Internet, the domestic enterprises which develops cross-border business via e-commerce, and the third party platforms which provide service for cross-border trade. Secondly, the trade or exchange should only be made via e-commerce platform linked with the Customs. Thirdly, the trade should only be cross-border trade. Any goods failed to follow any requirement above will be declared as general goods.

(Source: [www.customs.gov.cn](http://www.customs.gov.cn))

---

## 我国煤炭资源税改革出新政

10月9日，财政部、国家税务总局印发了《关于实施煤炭资源税改革的通知》，决定自2014年12月1日起，在全国范围内启动实施煤炭资源税从价计征改革工作，同时，清理相关收费基金，规范资源税费制度，促进资源节约集约利用和环境保护，推动经济发展方式转变。此次改革按照清费立税、减轻煤炭企业税费负担的原则进行煤炭资源税费改革，将有利于理顺资源税费关系，规范财税秩序；有利于完善资源产品价格形成机制，促进资源合理开采利用。

### New Policy Issued on Coal Resource Tax Reform

On Oct.9, the Ministry of Finance and the State Administration of Taxation issued Notice on the implementation of the coal resource tax reform ("Notice"). From Dec.1, 2014, the reform of ad valorem coal resource tax will begin. Meanwhile relevant funds will be cancelled, with the purpose of regulating resource tax policies, promoting to save and use intensively resources and to protect environment, and accelerating transformation of economic development patterns. With the principle of cutting down fees and relieving the pressure of coal enterprises on

---

taxation, the reform will benefit the rebalancing of resources and tax and the improvement of resource pricing mechanism. Thus the order of finance and taxation will be regulated, and the resource will be exploited and utilized more reasonable.

(Source: <http://www.chinatax.gov.cn>)

---

## 自贸区大宗现货交易规则初定

上海自贸区近日发布了《中国（上海）自由贸易试验区大宗商品现货市场交易管理规则（试行）（草案）》（下称《草案》），并向社会征求意见。

根据草案，自贸区将允许报税大宗商品的交易，及仓单、提单项下的报税大宗商品的交易。在自贸区内大宗商品的交易须按照税前价格，不包含进口关税和增值税。大宗商品的交易将采用人民币报价和结算。

《草案》也要求大宗商品市场经营者指定独立第三方机构负责资金管理、资金结算和大宗商品的仓储。

从事与市场交易商品相关的贸易、生产、加工等经营活动的境内和境外企业法人若符合条件都可以成为该规则下的交易商。

**Free Trade Zone: Commodity Spot Trading Regulation Has Been Drafted**

---

Shanghai Free Trade Zone recently released draft rules for spot trading of commodities (“draft”). The regulator is soliciting public opinion on the draft.

The zone will allow the transactions of bonded commodities as well as warehouse receipts and bills of lading of underlying bonded commodities. Commodities traded in the FTZ should be at pretax prices that exclude import tariffs and value-added taxes. Trading of commodities will adopt yuan-denominated quotation and settlement.

The rules also require commodity market operators to employ separate third-party institutions to take care of fund custody, fund settlement and commodity warehousing.

Both domestic and foreign enterprises engaged in commodity-related trading, production, and processing are qualified to become commodity dealers under the rule.

(Source: [www.mofcom.gov.cn](http://www.mofcom.gov.cn))



---

## 海关总署发布关于明确进出口货物提前申报管理要求的公告

海关总署日前发布《关于明确进出口货物提前申报管理要求的公告》，进出口货物的收发货人、受委托的报关企业向海关提前申报的，应当符合公告规定。

根据公告，进出口货物的收发货人、受委托的报关企业提前申报的，应当先取得提（运）单或载货清单（舱单）数据；进出口货物的收发货人、受委托的报关企业应当如实申报，并对申报内容的真实性、准确性、完整性和规范性承担相应法律责任。若进口提前申报货物因故未到或者所到货物与提前申报内容不一致的，进口货物的收货人或其代理人需向海关提交相关说明材料。

General Administration of Customs Issued the Announcement of Clarifying Requirements of Declaring Importing and Exporting Goods in Advance

General Administration of Customs recently issued the Announcement of Clarifying Requirements of Declaring Importing and Exporting Goods in Advance ("Announcement"). The declaration to customs in advance of consigner, consignee and any entrusted enterprise should

---

conform to the provisions of the Announcement.

According to the Announcement, consigner, consignee and any entrusted enterprise who declare to customs in advance should have bills of lading or waybills, or the data of manifests. They should declare truthfully to customs, and bear relevant legal liability if not true, precise, complete, and standardized. If the goods declared in advance could not arrive on time or were inconsistent with the declaration, consigner, consignee or their agent should submit an explanation to customs.

(Source: [www.customs.gov.cn](http://www.customs.gov.cn))

---

## 商务部出台关于促进商贸物流发展的实施意见

近日，商务部印发了《关于促进商贸物流发展的实施意见》（以下简称《意见》）。《意见》强调了商贸物流发展的几个工作任务：一是提高社会化水平，支持商贸物流企业加强供应链管理，大力发展共同配送，支持传统仓储企业转型升级，向配送运营中心和第三方物流发展。二是提高专业化水平，大力发展电子商务物流，加强冷链物流建设，加快生产资料物流转型升级，鼓励发展绿色物流。三是提高信息化水平，支持企业共用信息系统实现数据共用、资源共享、信息互通，支持以企业为主体的物流综合信息服务平台发展。四是提高组织化水平，鼓励物流企业做大做强、融合发展，引导共同投资建设重要物流节点的仓储设施，合理布局物流园区（中心、基地）。

## Ministry of Commerce Announced the Comment on Promoting the Development of Trading and Logistics

Ministry of Commerce recently announced the Comment on Promoting the Development of Trading and Logistics ("Comment"). The Comment emphasized the tasks of developing trading and logistics. Firstly, prompting socialization level, and supporting trading and logistics enterprises with the management of supply chain, developing joint distribution, supporting traditional

---

warehousing enterprises upgrading to distribution centers and third-party logistic companies. Secondly, promoting Professionalization, developing e-commerce logistics, improving the construction of cold chain logistics, developing production materials logistics upgrading, and encouraging green logistics. Thirdly, promoting informatization level, supporting the sharing of data of public information system and recourses, developing enterprise-oriented logistics comprehensive information service platforms. Fourthly, promoting systematization level, encouraging logistics companies to develop comprehensively, leading the construction of warehousing facilities as important logistics hubs and reasonable planning of logistics zones.

(Source: [www.mofcom.gov.cn](http://www.mofcom.gov.cn))

---

## 实时资讯 REAL-TIME INFORMATION

### 李小加：沪港通望拓展至大宗商品领域

港交所总裁李小加 20 日表示，沪港两地交易所计划很快推出沪港通。伦敦金属交易所（LME）希望，最终让沪港通也适用于沪港两地的大宗商品交易。这也是继上月底表态后，李小加再次提及 LME 未来打通内地大宗商品市场的目标。

此前，李小加曾表示，“LME 产品平台东移”，计划推出四种商品期货交易，包括铜、锌、铝和动力煤。为贴近内地投资者，LME 主要的 25 吨合同将改为 5 吨的小合同，并依照内地习惯使用现金交易，更将实现以人民币计价，采用在亚洲交易时段清算、简化合同到每月合同等新的方式。

Xiaojia Li: “Ganghutong” Program May Applied to Commodities

On Oct.20, the CEO of Hong Kong Exchanges, Xiaojia Li, said that “Hugangtong” program would be launched soon at both Shanghai and Hong Kong Exchanges. London Metal Exchange (LME) hope that the program will apply to the commodity

---

trading in both Shanghai and Hong Kong. This is the second time that Xiaojia Li mentioned that LME would enter in the domestic commodity trading market.

Previously Xiaojia Li has mentioned the LME products platform eastward-moving which includes the trading of 4 kinds of commodity (copper, zinc, aluminum, and steam coal). Aiming at domestic investors, LME has changed the contract from 25 tons to 5 tons, and use cash to trade according to domestic tradition. In the future the exchange will adopt yuan-denominated quotation, and the settlement will be done in Asian trading time. And the contract will be simplified to monthly contract.

(Source: [www.sinotf.com](http://www.sinotf.com))

---

## 钢贸危机蔓延至大型贸易商，银监会摸底质押融资

上海银监局日前下发通知，要求辖内各家银行上报截止今年 9 月末的质押贷款和知识产权质押贷款业务数据，并就质押融资中存在的困难和风险以及未来的拓展思路进行调研并征求意见。

因青岛港贸易融资事件，大宗商品领域的重复抵押以骗取贷款行为再度成为监管部门的重点关照对象。

据悉，在此番摸底中，监管部门要求银行上报包括质押贷款总额，不良质押贷款总额，并根据质押物类型的不同，分别上报仓单、知识产权、信用保险保单、股权等类别的贷款总额和不良贷款情况，以及相应的借款人情况。

Steel Trading Crisis Spread to Large Traders, CBRC Investigates Inventory Financing

China Banking Regulatory Commission, Shanghai Office recently requested that every bank within the jurisdiction to report the data of pledged loans of both goods and intellectual properties until September. They also launched

---

research and sought advices from the public concerning the difficulties and risks in pledged loan and future direction.

Because of the Qingdao fraud trading case, repeated mortgage of commodities for mortgage fraud again becomes the important part of the investigation.

In the investigation, the supervision department requires banks to report the total amount of pledged loans, and bad pledged loans. According to the different types of pledge, it should be reported that the total amount of pledged loans, and bad pledged loans of warehouse receipts, intellectual properties, credit insurance policies and shares, and relevant information of borrowers.

(Source: [www.sinotf.com](http://www.sinotf.com))



## 大宗商品最怕哪种风险

如下图彭博大宗商品指数走势所示，目前大宗商品的整体价格跌入 2009 年以来的低谷。（见图 1）



图 1 (Figure 1)

到底哪些因素害得大宗商品跳水？德意志银行整理了一些主要大宗商品面临的风险，如图 2 所示：

- 对石油而言，美元走强、供应增加、中国经济增长和俄罗斯与乌克兰的地缘政治风险都是最难以抵御的风险。
- 对黄金、白银和可可来说，最难以抵御的都是美元走强。
- 铜最大的风险来自中国经济增长。
- 铁矿石最禁不起供应增加和中国经济增长方面的打击。
- 大豆的最大风险是供应增加。



图 2 (Figure 2)

Which Risk Threatens the Price of Commodity Most?

As the figure of Bloomberg Commodity Index shows that the current price of commodity has fallen off a cliff since 2009. (See Figure 1).

What elements influence the price of commodity? Deutsche Bank concluded some risks threatening the price. See Figure 2.

- For oil, the risks consist of the rallying of dollar, increasing supply, economic growth of China, and geopolitical risks between Russia and Ukraine.

- 
- For gold, silver and Cocoa, the strongest threaten is the rallying of dollar.
  - The strongest risk of copper price is the economic growth of China.
  - For iron ore, the risk comes from the increasing supply and the economic growth of China.
  - The strongest risk of soybean is the supply increasing.

(Source: [www.sinotf.com](http://www.sinotf.com))

---

## 中国大宗商品贸易融资边际收益下降

国际美元指数录得 40 年来最长涨势，引发全球大宗商品雪崩行情的同时，亦打压中国大宗商品贸易融资，加上青岛港融资骗贷案后不断收紧的信用证约束，中国贸易融资正在大幅减少。

市场人士表示，现阶段贸易信用证的开证异常困难，加上美联储加息预期和中国政府降低利率的努力，都在挤压中美利差前景，将进一步拖累贸易融资的边际收益。

## Marginal Income of Chinese Commodity Trading Falls down

The international dollar index was recorded as the longest rally in recent 40 years, which caused the decrease of commodity prices. At the same time, Chinese commodity trading finance was influenced. After Qingdao fraud financing case, the regulation of the letter of credit has becoming stricter. Trading finance in China is decreasing.

A market participant said that recently the issuing of letter of credit has becoming more difficult. The Federal Reserve's expectation of raising rates and Chinese government's effort

---

of reducing interests will further drag the marginal income of trading finance.

(Source: [www.sinotf.com](http://www.sinotf.com))

---

## 大宗商品贸易金融化暴露信贷风险

有研究机构指出，上半年，实体经济领域形成的不良贷款依然是商业银行资产质量下滑的主要因素，其中的一个风险变化特征是贸易融资风险由钢贸扩展到其他大宗商品贸易领域。上半年，在钢贸贷款风险继续发酵的同时，煤炭、铜和铁矿石等大宗商品流通环节融资风险也时有暴露。中债资信评级业务部的张翔日前指出，2013 年以来，个别大型商贸企业出现巨额亏损或贷款逾期问题，是前期上海、华南小型钢贸商、区域性钢材市场的信贷危机的延续和升级，是在宏观经济增速放缓、相关行业景气度低迷的大背景下，钢贸业务类融资属性的高风险性与相关企业风控能力不匹配的必然结果。

## Financialization of Commodity Trading reveals Credit Risk

A research institution indicates that in the first half of the year bad loans in real economy area is still the main reason for the reducing of commercial bank assets quality. One characteristic of the risk has changed from steel trading to other commodity trading. With the existence of the steel loans risk, the risk in trading finance of other commodity, such as coal, copper, and iron ore, exposes. Xiang Zhang, from credit trading department of China Credit Rating Co.,

---

Ltd., indicates that since 2013 many large trading companies have has the problem concerning huge losses and delinquent loans, which is the inevitable result of the credit crisis of small steel trader in Shanghai and Southern China and regional steel market. With the background of slowing macro-economic growth and the downturn of relevant industry, the risk control of relevant trading companies cannot match with the high-risk of steel trading financing.

(Source: [www.sinotf.com](http://www.sinotf.com))

---

## 案例分析 CASE STUDY

电放方式下，若没有约定必须凭托运人指示才能交付货物，承运人直接交付货物给记名收货人是否应当承担赔偿责任

常熟市万泰进出口贸易有限公司诉青岛银辉国际货运代理有限公司等海上货物运输合同纠纷案

### 【案件基本信息】

#### 1、判决书字号

一审判决书字号：（2011）青海法海商初字第24号

二审判决书字号：（2012）鲁民四终字第66号。

#### 2、案由：海上货物运输合同纠纷

#### 3、当事人：

原告（上诉人）：常熟市万泰进出口贸易有限公司。

被告（被上诉人）：青岛银辉国际货运代理有限公司。

被告（被上诉人）：大连银辉国际货运代理有限公司青岛分公司。

被告（被上诉人）：大连银辉国际货运代理有限公司。

### 【基本案情】

2010年9月25日，原告委托青岛银辉办理租船订舱、报关报验事宜。

9月27日原告通过MSN向青岛银辉发送订舱委托书。10月8日该票货物从



---

青岛港出运，双方进行了提单确认。该两票提单载明的托运人均均为原告，收货人均均为韩国公司FASHION OF HIGH COLLECTION。起运港为中国青岛，目的港为韩国仁川。提单中有“COPY NON-NEGOTIABLE”字样。报关单显示货物价值为15120美元和5200美元。该两票货物顺利出运后，于10月9日到达目的港，10月12日交给韩国收货人。10月26日原告要求青岛银辉出具带有电放字样的提单以作留底。同日，原告向青岛银辉支付了上述货物的代理费共计1200元。

提单号为SILU20101005A、SILU20101005B的两份提单的抬头均为SILVER INT’ L TRANSPORT CO.,LTD，该提单符合大连银辉青岛分公司在交通部登记的无船承运人业务备案提单格式，大连银辉青岛分公司具有无船承运业务经营资格。

庭审中，原被告双方确认涉案货物是24小时到达目的港的快船运输，原告未持有出运货物的全套正本提单，关于货物在目的港的交付原告与被告没有做出特别的约定，双方没有要求承运人在放货前必须获得其明确指示的约定。被告采取了传真提单给目的港代理、由其核对收货人身份的方式交付货物，并已将货物交付给提单载明的收货人，原告确认货物被提单载明的收货人提走。

原告诉称，2010年10月8日，原告委托青岛银辉作为原告的货代公司办理服装出口的货运代理事务。在原告未提供盖公章电放保函的情况下，青岛银辉擅自安排提单电放，致原告遭受严重损失。大连银辉青岛分公司无原告指示擅自签发电放提单，其依法应对由此给原告造成的损失承担赔偿责任。大连银辉青岛分公司不具备法人资格，其民

---

事责任应当由大连银辉承担。请求三被告赔偿因无指示放货给原告造成的损失20320美元。

三被告共同辩称，本案不是凭正本提单交付，双方也并未约定根据原告指示交付货物，被告交付货物正确。原告提出异议的根本原因是在于基础贸易项下出现了纠纷，其意图恶意转移贸易风险。请求驳回原告的诉讼请求。

### 【案件焦点】

电放方式下，若没有约定必须凭托运人指示才能交付货物，承运人直接交付货物给记名收货人是否应承担责任？

### 【法院裁判要旨】

青岛海事法院经审理认为：在本案没有签发正本提单的情况下，而且原告与被告不存在目的港凭指令放货的约定的情况下，被告大连银辉青岛分公司将货物交付给提单载明的收货人的做法，并不构成违约。被告大连银辉青岛分公司将货物交付给提单载明的收货人的做法符合我国法律规定，并无不当。《合同法》第三百零九条明确规定，货物运输到达后，承运人可以直接通知收货人提取货物。原告主张的“托运人未出具电放保函承运人不得电放货物”的观点没有事实与法律依据。我国法律对电放并没有明确的规定，但按照交易习惯，电放保函的出具不是必须的、强制性的，也不是承运人电放货物的前提。因此原告关于被告未经其指示错误电放货物的主张不能成立。

---

青岛海事法院依照《中华人民共和国合同法》第三百零九条、《中华人民共和国民事诉讼法》第六十四条之规定，作出如下判决：驳回原告常熟市万泰进出口贸易有限公司的诉讼请求。

原告持原审起诉意见提起上诉。山东省高级人民法院经审理认为，青岛银辉在为常熟万泰办理货运代理业务的过程中，并无不当行为。常熟万泰无权就涉案货物在目的港被交付给收货人要求青岛银辉承担赔偿责任。涉案货物出运后，大连银辉青岛分公司作为无船承运人，向常熟万泰出具了提单副本，据此，常熟万泰与大连银辉青岛分公司之间建立海上货物运输合同关系。本案中，常熟万泰并未要求大连银辉青岛分公司签发正本提单，也未与大连银辉青岛分公司就目的港如何交付货物进行特别约定，涉案货物到达目的港后，大连银辉青岛分公司向涉案提单副本上记名的收货人交付货物，合法正当，不应向常熟万泰承担赔偿责任。大连银辉亦无需向常熟万泰承担赔偿责任。

山东省高级人民法院根据《中华人民共和国民事诉讼法》第一百五十三条第一款第（一）项的规定，作出如下判决：

驳回上诉，维持原判。

### 【法官后语】

本案主要涉及电放方式下货物如何交付的问题。电放与传统的凭正本提单交付货物不同，我国法律对电放并没有明确的规定，但按照交易习惯，电放是承运人在不签发正本提单或者收回已经签发的全部正本提单的前提下，以电子邮件、传真或者电报等方式通知其在目的

---

港代理，将运输的货物交付给托运人指定的收货人。在电放方式下，承运人不签发正本提单，但一般会出具提单副本或提单复印件。当提单收货人一栏记载的是记名收货人时，承运人是否需要等待托运人的指示才能交付货物。这正是本案的焦点所在。

电放提单虽不具有正本提单的据以交付货物的依据和物权凭证的功能，但仍然具有海上货物运输合同证明的功能。因此本案中的运输合同关系可以认定。一、二审的审判思路都是认为既然属于合同关系，就应当首先按照双方关于交付方式的约定来判断是否存在违约。本案所涉货物的提单为原告确认过的记名提单，该提单所证明的运输合同下的收货人是确定的，承运人负有将货物交付给该收货人的义务。在原告并未要求承运人签发正本提单的情形下，承运人不负有凭正本提单交付货物的义务，此时除非双方有关于目的港交付货物必须凭托运人明确指示的特别约定，否则承运人将货物交付给提单载明的收货人，并不构成违约。那么是否违反电放的交易习惯呢？原告主张凭托运人电放保函放货是电放的交易习惯。对此，法院认为在实际的业务操作中，有些情形承运人确实要求托运人出具电放保函，但不排除承运人并不要求电放保函的情形。从电放保函的性质来看，其显然是要求托运人提供一项担保，而不是一份指令，设定的是托运人的义务而非权利；从电放保函的目的来看，也完全是承运人为了进一步保护自身利益而采取的一项举措而已。因此电放保函的出具不是承运人电放货物的前提，故被告直接交付货物并不违反交易惯例。

值得注意的是，随着国际集装箱运输业的飞速发展，提单晚于货

---

物到达目的港的现象增加，尤其是近洋运输，“货等单”的问题给买方及港口都造成了不便，甚至损失。提单的流程遇到了严峻的挑战，由此电放交付货物的方式应运而生。但电放的实施是建立在买卖双方及承托双方等各方面彼此信赖的基础之上的，这种信赖非常脆弱，近几年因为经济危机的影响，不断发生贸易环节的纷争，一旦产生，必然会导致电放纠纷层出不穷，因此，近几年各地海事法院受理此类案件的数量大幅上升。因此，对于托运人而言这种交付货物的方式存在很大风险，建议托运人在货物出运时与承运人作出“虽不签发正本提单，但货到目的港后必须等待托运人的指示才能交付货物”的特别约定，这种才可保护托运人对货物的控制权。

（转载自：中国涉外商事海事审判网）

## Chinese coal quality restrictions: a further headache for bulk importers?

by Ik Wei Chong (Clyde & Co, Shanghai)

Given the growing concern over air pollution in major cities along the Chinese seaboard, and the current reliance on coal-burning power stations, it may come as no surprise that wide-ranging quality restrictions on coal, including imported bulk coal, have been jointly announced by six ministerial departments, headed by the National Development and Reform Commission.

The announcement of the Provisional Measures on Quality Management of Commercial Coal on 15 September 2014 has the potential to force significant change among the international mining community, with limits placed on ash and sulphur content, alongside other specifications.

### **General provisions**

---

This new legislation sets limits to the following elements of commercial coal generally, where commercial coal refers to those coal products that will be sold within China, including coal subject to long-distance transportation for an enterprise's own use.

Ash content and sulphur content are particularly heavily legislated against. The general restriction specifies that brown or lignite coal must contain ash and sulphur content below 30% and 1.5% respectively. For all other coal this limit is raised to 40% and 3% respectively.

However, it is clear that these limits remain an absolute maximum and the National Development and Reform Commission has tightened restrictions further for two important categories.

### **Coal transported more than 600km within China**

The Commission has defined this distance as the distance from point of origin within China to point of consumption, or for imports, from port of arrival to point of consumption.

---

Such products may not exceed 20% ash and 1% sulphur for brown or lignite coal, and 30% ash and 2% sulphur for other coal. These grades of coal must also maintain a minimum calorific content, specifically, greater than 16.5MJ/kg for brown or lignite coal and greater than 18MJ/kg for other coal.

### **Bulk coal**

Bulk coal faces even further restriction if delivered within the areas surrounding Beijing, Shanghai or Guangzhou. Restrictions will apply to coal with ash content over 16% and sulphur content over 1%.

Importantly, the wording of the legislation does not suggest a general prohibition on coal exceeding these margins. This may reflect a pragmatic approach on the part of the government as such widespread change cannot be achieved overnight. It is anticipated that the government will adopt limits over the aggregate quantity of the 'off-specification' coal supplied in these areas, with the underlying intention of decreasing quantities of such supplies over time. However, the terms under which avoidance of such restrictions could be



---

permitted, such as initial aggregate quantities, are yet to be announced.

Similarly, of importance for chemical manufacturers and power plants, there appears to be potential relaxation of limits on sulphur levels where users have appropriate desulphurisation, waste disposal or recycling facilities available. Again, details of such relaxations will follow further consultation and are yet to be announced.

### **Duty to self-regulate**

The enforcement of the legislation is delegated to the coal administration departments and other relevant departments, who will supervise those businesses engaged in the production, processing, storage, sale, importation or use of coal. All such businesses are liable to be inspected randomly to test coal quality, including on entry at any relevant port. However, the legislation also places the onus on businesses, whether seller, shipper, importer or end user, to maintain accurate quality records, to ship coal of different grades in isolation to prevent mixing, and to maintain quality in line

---

with the standards set out in Commercial Coal Marking (GB/T25209-2010), which are China's national standards in this area.

### **Implementation date**

Currently, these limits will come into force with the legislation itself on 1 January 2015. Despite being titled a provisional measure, we understand that the legislation will remain in effect for some years to come, although it is hard to predict exactly how long it will remain in force. It is not uncommon in China for 'provisional' legislation to be in force for a good number of years.

Even once fully announced, we expect a time lag while such measures are brought into full force and we expect implementation during the early stages to vary from place to place.

While clearly a shot across the bows of coal importers, and cause for consideration, the exact level of detailed regulations to be enacted is not yet clear. Certainly there are

---

defined upper limits for the quality of imported coal; however, where restriction rather than prohibition is called for, namely in the use of bulk coal around major cities, details are conspicuously absent. In the interim we await further updates from the Commission and the five ministerial departments with which it is collaborating.

(Source: [www.forwarderlaw.com](http://www.forwarderlaw.com))

---

## 联系我们 CONTACT

官方网站: [www.dachenglaw.com](http://www.dachenglaw.com)

北京总部: 北京市朝阳区东大桥路 9 号侨福芳草地 D 座 7 层

邮编: 100020

联系人: 马楚菽

电话: +86 10 5813 7799

传真: +86 10 5813 7778

邮箱: [chuqiao.ma@dachenglaw.com](mailto:chuqiao.ma@dachenglaw.com)

Beijing Dacheng Law Offices, LLP

[www.dachenglaw.com](http://www.dachenglaw.com)

Address: 7/F, Building D, No.9, Dongdaqiao Road, Chaoyang

Dist., Beijing, China

Postcode: 100020

Tel: +86 10 5813 7799

Fax: +86 10 5813 7778

E-mail: [chuqiao.ma@dachenglaw.com](mailto:chuqiao.ma@dachenglaw.com)