

Foreign Trade Law of the People's Republic of China

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CHAPTER ONE GENERAL PROVISIONS

Article 1 The law has been formulated with a view to developing foreign trade, maintaining order in foreign trade activities and promoting a healthy development of the socialist market economy.

Article 2 The term "foreign trade" used in this law refers to the import and export of goods and technologies and international service trade.

Article 3 The department in charge of foreign economic cooperation and trade under the State Council takes charge of all foreign trade work in the whole country according to this law.

Article 4 The State adopts a unified foreign trade system and exercises a fair and free trade order.

The State shall encourage every effort in trade development, help to bring the initiative of the localities into play, and safeguard the autonomy of trade operators in trade operation.

Article 5 The People's Republic of China shall promote and develop trading relations with all other countries and regions on the principle of equality and mutual benefit.

Article 6 The People's Republic of China shall, in accordance with international treaties or agreements that she has signed or entered into, grant the counterparts which have signed or entered into such treaties or agreements the most favour nation or national treatment of China.

Article 7 The People's Republic of China shall have the right to adopt, in accordance with the actual circumstances, corresponding measures against any country or region to counter their discriminatory banning, restrict or other acts on Chinese goods.

CHAPTER TWO FOREIGN TRADE OPERATOR

Article 8 The term "foreign trade operator" used in this law refers to a legal person or organization engaging in foreign trade activities in compliance with the provisions of this law.

Article 9 A foreign trade operator engaging in the import and export of goods or technologies shall meet the following requirements and get the license from the department in charge of foreign economic cooperation and trade under the State Council:

1. It shall have its own name and organizational setup;
2. It shall have a clearly defined scope of foreign trade operations;
3. It shall have the site, funds and professional personnel necessary for carrying out foreign trade activities;
4. The import and export operations handled by its agencies have reached the prescribed merit or it shall have the necessary sources of goods for import or export; and
5. It shall have other conditions as required by other laws or administrative decrees.

The detailed rules for the implementation of the preceding provisions shall be formulated by the State Council.

Foreign-funded enterprises (FEEs) shall be exempted from licenses referred to above when importing non-productive goods for their own use or equipment, raw and other materials needed in their own production and in exporting their products according to the provisions of the laws governing FEE and relevant administrative decrees.

Article 10 The start-up and business operations of enterprises and organizations engaging in international service trade shall follow the provisions of this and other relevant laws and administrative decrees.

Article 11 Foreign trade operators shall operate independently according to law and be responsible for their own profits or losses.

Article 12 In carrying out foreign trade activities, the operators shall abide by contracts, ensure the quality of commodities and improve after-sale services.

Article 13 An organization or an individual that does not acquire a license for carrying out foreign trade activities may entrust a foreign trade operator as agent to handle the ad hoc trade operations within the ad hoc scope of business.

A foreign trade operator acting as an agent shall provide appropriate information to the trustor such as market prices and conditions of clients. The trustor and the trustee shall sign a contract, which shall stipulate the rights and obligations of both sides.

Article 14 A foreign trade operator shall provide documents and materials related to its foreign trade activities to departments concerned according to the provisions promulgated by the department in charge of foreign economic cooperation and trade under the State Council and the department concerned shall undertake to protect the commercial secrets of the foreign trade operator.

CHAPTER THREE IMPORT AND EXPORT OF GOODS AND TECHNOLOGIES

Article 15 The State shall allow the free import and export of goods and technologies, except otherwise provided for by other laws and administrative decrees.

Article 16 The State may restrict the import or export of the goods or technologies that are of:

1. being necessary of restriction in import and export because of involving national security and public interest;
2. being necessary of restriction of export because of a short of supply at home or being important domestic resources that are of danger of being exhausted;
3. under restriction of import by import countries or regions due to a limited market;
4. necessary of restriction of import by the State to protect the smooth or accelerated development of certain industries at home;
5. agricultural, animal husbandry and fishery products in any form that are necessary to be restricted of importing by the State;
6. being necessary of restriction of import by the State in view to maintain a certain financial position of the nation in the world or to ensure a balance of international payments of the country; and
7. subject to restriction of import and export by international treaties or agreements to which the People's Republic of China is a signatory or has entered.

Article 17 The State shall ban the import or export of goods or technologies that are of:

1. jeopardy to national security or public interest;
2. necessary to ban their import in view to protect the life or health of the people;

3. danger to ecological environment; and

4. banning import by the provisions of international treaties or agreements to which the People's Republic of China is a signatory or has entered.

Article 18 The department in charge of foreign economic cooperation and trade under the State Council shall, together with other relevant departments under the State Council, draw up, revise and publish the catalogues of goods and technologies whose import or export are restricted or banned in accordance with the provisions of Articles 16 and 17 of this law.

The department in charge of foreign economic cooperation and trade under the State Council may, independently or together with other relevant departments under the State Council, take prompt decisions to restrict or ban the import or export of special goods or technologies not listed in the catalogue mentioned in the Articles 16 and 17 of this law.

Article 19 Goods whose import or export is restricted shall be subject to quota or license management; technologies whose import or export is restricted shall be subject to license management.

Goods and technologies subject to quota or license management can be imported or exported only when it has been approved by the department in charge of foreign economic cooperation and trade independently or jointly with other relevant departments under the State Council according to the provisions promulgated by the State Council.

Article 20 The import and export quotas shall be allocated by the department in charge of foreign economic cooperation and trade under the State Council or by relevant departments under the State Council within their terms of reference in line with the import and export performances and capabilities of applicants and on the basis of the principles of efficiency, fairness, openness and fair competition.

The specific methods of quota allocation shall be worked out by the State Council.

Article 21 For goods and article, including culture relics, wild animals and plants and their products whose import or export is banned or restricted according to other laws and administrative decrees, the provisions of other laws and administrative decrees shall apply.

CHAPTER FOUR INTERNATIONAL SERVICE TRADE

Article 22 The State shall encourage the development of international service trade on steps.

Article 23 In context of international service trade, the People's Republic of China shall grant market access and national treatment of other parties which have signed or entered into the international treaties and agreements to which China is a signatory or a participant with regard to international service trade.

Article 24 Some restrictions might be imposed on the international service trade by the State on following reasons:

1. For safeguarding national security or public interests;
2. For protecting the ecological environment;
3. For safeguarding the smooth or accelerated development of given service trade at home;
4. For guaranteeing the country's balance of international payments;and
5. For other reasons as prescribed by other laws or administrative decrees.

Article 25 The State shall ban the international service trade which would:

1. jeopardize the national security or public interests;

2. result in a violation to the international obligations undertaken by the People's Republic of China;
and

3. be banned by the provisions of other laws or administrative decrees.

Article 26 The Department in charge of foreign economic cooperation and trade and other relevant departments under the State Council shall give due management to the international service trade in accordance with the provisions of this and other laws and administrative decrees.

CHAPTER FIVE FOREIGN TRADE ORDER

Article 27 Foreign trade shall be undertaken in compliance with law and under the principle of fair competition with the following acts being strictly prohibited:

1. Forge, modify or trade in certificates of place of origin and import and export licenses;
2. Infringe upon the intellectual property rights protected by the law of the People's Republic of China;
3. Expel competitors by resorting to unjustifiable means of competition;
4. Get export refund from the State by deception; and
5. Commit acts that violate the provisions of other laws and administrative decrees.

Article 28 In undertakings of foreign trade, foreign exchange should be appropriately cleared and used according to the relevant provisions of the State.

Article 29 Should the normal production of some of the domestic goods be in great harm or under great threat of such harm due to the increasing import of same kinds of goods or similar goods that are in severe competition with the domestic ones, the State may take any countermeasures to expel or mitigate such harm or threat.

Article 30 Should a well established or fledgling industry at home be in substantial harm or under threat of such harm due to the import of relative goods in under normal value, the State may take any countermeasures to expel or mitigate such harm or threat.

Article 31 Should a well-established or fledgling industry at home be in substantial harm or under threat of such harm due to the import of goods that are exported under some kinds of subsidies of the exporting country or region, the State may take any countermeasures to expel or mitigate such harm of threat.

Article 32 If cases prescribed in Article 29, Article 30 and Article 31 occur, the departments or organizations designated by the State Council shall investigate into and handle them properly according to the provisions of the laws and administrative decrees.

CHAPTER SIX PROMOTION OF FOREIGN TRADE

Article 33 For developing foreign trade, the State shall make effort to set up and improve special financial institutions that are to serve foreign trade as well as establish development and risk funds for the trade.

Article 34 The State shall adopt various promotion measures to develop foreign trade including issuing of import and export credits and setting up of export refunds etc.

Article 35 Foreign trade operators may establish or enter in any import and export chambers of commerce according to law.

Import and export chambers of commerce shall abide by the laws and administrative decrees to coordinate the efforts of their members, provide them with guidance and consultancy services, convey to the government departments in charge proposals on promoting foreign trade, and actively carry out

foreign trade promotion activities.

Article 36 Chinese organizations for the promotion of international trade shall, according to their articles of association, develop contacts with overseas businesses, hold exhibitions, provide information and consultancy services and engage in other foreign trade promotion activities.

Article 37 The State shall make special effort to promote foreign trade ethnic autonomous regions and economically less developed areas.

CHAPTER SEVEN LEGAL RESPONSIBILITIES

Article 38 Smuggling of goods that are restricted or banned for import or export shall be punished accordingly. If the case is serious enough to constitute a crime, criminal responsibility shall be affixed in accordance with supplementary provisions on punishing smuggling. If the case is not serious enough to constitute a crime, it shall be handled in accordance with the corresponding provisions of the customs. In such cases, related foreign trade licenses shall be revoked at the same time by the department in charge of foreign cooperation and trade.

Article 39 Criminal responsibilities shall be affixed according to the provisions of Article 167 of the criminal law on any forge or modification of certificates of place of origin or import and export licenses. Criminal responsibilities shall be affixed in reference to the provisions of Article 167 of the criminal law on trade-in of certificates of place of origin for imports and exports, import and export licenses or trade-in of forged or modified certificates of place of origin or import and export licenses.

For a unit that has committed the crimes mentioned in the preceding paragraph, pecuniary penalty shall be given and additionally criminal responsibilities shall be affixed according to or in reference to the provisions of Article 167 of the criminal law on the responsible people or other people directly in charge. The department in charge of foreign economic cooperation and trade under the State Council may, concurrently, revoke its foreign trade license.

Those who knowingly use forged or modified licenses for import or export shall be punished according to the provisions of Article 38 of this law.

Article 40 For illegally importing or exporting technologies whose import or export is banned or restricted against this law, if the case is serious enough to constitute a crime, criminal responsibilities shall be affixed in reference to the supplementary provisions on punishing smuggling crimes.

Article 41 If a foreign trade worker is found committed dereliction of duty, resorted to deception for personal gains or abused their powers, criminal responsibilities shall be affixed if the case is serious enough to constitute a crime and administrative punishments shall be meted out if the case is not serious enough to constitute a crime.

If a foreign trade worker is found taking advantage of his/her position to extort effects from others or seek interests for others after accepting effects, criminal responsibilities shall be affixed according to the supplementary provisions for punishing corruption and bribery if the case is serious enough to constitute a crime and administrative punishments shall be meted out if the case is not serious enough to constitute a crime.

CHAPTER EIGHT SUPPLEMENTARY PROVISIONS

Article 42 The State shall adopt flexible measures and grant preferential treatment and conveniences to promote trade between border towns of China and neighboring countries and trading among border residents at fairs within each other's territories. Specific procedures shall be formulated by the State Council.

Article 43 The law shall not apply to exclusive tariff areas of the People's Republic of China.

Article 44 The law shall be implemented as of July 1, 1994.