

Foreign Trade Law of the People's Republic of China

Full text

Chapter I General Provisions

Article 1 This Law is enacted with a view to opening wider to the outside world, developing foreign trade, maintaining foreign trade order, protecting the legitimate rights and interests of foreign trade dealers and promoting the sound development of the socialist market economy.

Article 2 This Law is applicable to foreign trade and the protection of foreign-trade-related aspects of intellectual property rights. For purposes of this Law, foreign trade refers to the import and export of goods and technologies, and international service trade.

Article 3 The department for foreign trade under the State Council is in charge of foreign trade throughout the country pursuant to this Law.

Article 4 The State applies a unified system of foreign trade, encourages the development of foreign trade and preserves a fair and free foreign trade order.

Article 5 The People's Republic of China, on the principle of equality and mutual benefit, promotes and develops trade relations with other countries and regions, concludes or accedes to such regional economic and trade agreements as tariff alliances agreement and free trade zone agreement, and joins regional economic organizations.

Article 6 In the field of foreign trade, the People's Republic of China, in accordance with the international treaties and agreements it has signed or acceded to, grants the other signatories or acceding parties most-favored-nation treatment or national treatment, or on the principle of mutual benefit and reciprocity, grants the other party most-favored-nation treatment or national treatment, etc.

Article 7 In the event that any country or region adopts prohibitive, restrictive or other similar measures that are discriminatory in nature against the People's Republic of China in trade, the People's Republic of China may, in light of the actual conditions, take countermeasures against the country or region accordingly.

Chapter II Foreign Trade Dealers

Article 8 For purposes of this Law, foreign trade dealers refer to the legal persons, other organizations or individuals that have gone through the formalities of industrial, commercial or other registration in accordance with law and engage in foreign trade activities in compliance with the provisions of this Law and relevant laws and administrative regulations.

Article 9 A foreign trade dealer who intends to engage in the import and export of goods or technologies shall register with the department for foreign trade under the State Council or the body it entrusts with the registration, unless otherwise prescribed by laws, administrative regulations or by the said department.

The specific measures for registration shall be formulated by the department. Where a foreign trade dealer fails to register as required by regulations, the Customs shall not process the procedures of declaration, inspection and release for the import or export of goods.

Article 10 The units and individuals engaged in international trade in services shall observe the provisions of this Law, and of the relevant laws and administrative regulations. The units engaged in contracted construction of foreign projects or service cooperation with other countries shall have the necessary eligibility or qualification. The specific measures in this regard shall be formulated by the State Council.

Article 11 The State may put the import and export of certain goods under the control of State- operated trading. Such goods shall only be imported and exported by the authorized enterprises, except the import and export of certain quantities of the goods under State- operated trading which the State permits to be operated by unauthorized enterprises. The catalogues of the goods under the control of State- operated trading and the authorized enterprises shall be determined, adjusted and published by the department for foreign trade under the State Council in conjunction with the relevant department under the State Council. Where, in violation of the provisions in the first paragraph of this Article, the goods under State- operated trading are imported or exported without authorization, the Customs shall not grant to them clearance.

Article 12 A foreign trade dealer may accept the entrustment by another person to engage in foreign trade as an agent within the scope of its business operations.

Article 13 A foreign trade dealer shall, in accordance with the regulations laid down according to law by the department for foreign trade under the State Council or any other relevant department under the State Council, submit to relevant departments the documents and information related to its foreign trade activities. The latter shall keep the business secrets for the former.

Chapter III Import and Export of Goods and Technologies

Article 14 The State permits free import and export of goods and technologies, except where otherwise provided for in laws and administrative regulations.

Article 15 The department for foreign trade under the State Council may, based on the need to monitor imports and exports, implement an automatic import and export licensing system for certain goods subject to free import and export and shall publish the catalogue thereof. Where the consignee or consigner, before going through the Customs declaration formalities, submits an application for automatic licensing for the import or export of the goods under such licensing, the department for foreign trade under the State Council or its authorized department shall grant permission to it . The Customs shall not grant clearance to the goods for which the formalities for automatic licensing are not gone through. In the case of importing or exporting technologies subject to free import and export, the contracts thereof shall be registered with the department for foreign trade under the State Council or the authority it entrusts with such registration.

Article 16 For the following reasons, the State may restrict or prohibit the import or export of relevant goods and technologies:

(1) for safeguarding State security, and public interests and ethics, it is necessary to restrict or prohibit

their import and export;

(2) for protecting human health or safety, the lives or health of animals and plants, or the environment, it is necessary to restrict or prohibit their import or export;

(3) for implementing the measures related to the import and export of gold and silver, it is necessary to restrict or prohibit their import or export;

(4) because of short supply on domestic market or for effective conservation of exhaustible natural resources, it is necessary to restrict or prohibit their export;

(5) because of the limited market capacity of the importing country or region, it is necessary to restrict their export;

(6) because of serious chaos in export order, it is necessary to restrict their export;

(7) for establishing or speeding up the establishment of a particular domestic industry, it is necessary to restrict their import;

(8) it is necessary to restrict the import of agricultural, animal husbandry and fishery products of any form;

(9) for maintaining the State's international financial position and the balance of international receipts and payments, it is necessary to restrict their import;

(10) other goods the import or export of which needs to be restricted or prohibited, as required by laws and administrative regulations; or

(11) other goods the import or export of which needs to be restricted or prohibited in accordance with the provisions of international treaties or agreements signed or acceded to by the People's Republic of China.

Article 17 With regard to the import and export of goods and technologies related to fissile and fusion material or the substances from which such material is derived, and the imports and exports related to arms, ammunition or other military supplies, the State may adopt any necessary measures to safeguard State security. In wartime or for the purpose of preserving international peace and security, the State may adopt any necessary measures in respect of the import and export of goods and technologies.

Article 18 The department for foreign trade under the State Council shall, in conjunction with other departments under the State Council and in accordance with the provisions in Articles 16 and 17 of this Law, formulate, adjust and publish the catalogue of goods and technologies that are restricted or prohibited for import or export. With the approval of the State Council, the department for foreign trade under the State Council or the said department in conjunction with other relevant departments under the State Council may, within the scope specified by the provisions in Article 16 and 17 of this Law, decide on temporary restriction or prohibition on the import or export of specific goods and technologies other than the ones listed in the catalogue mentioned in the preceding paragraph.

Article 19 The State exercises control of the goods subject to import or export restriction through quotas, licensing, etc; with regard to the technologies the import or export of which is restricted, it exercises control through licensing. The goods and technologies subject to control through quotas or licensing may only be imported or exported upon permission by the department for foreign trade under the State Council, or upon permission jointly by the department and the relevant departments under the State Council, as required by the regulations of the State Council. The State exercises control of part of the imported goods through tariff-rate quota.

Article 20 Quotas for imported and exported goods and tariff-rate quotas shall be distributed by the department for foreign trade under the State Council or the relevant departments under the State Council

within the limits of their respective responsibilities, on the principles of openness, fairness, impartiality and efficiency. The specific measures in this regard shall be formulated by the State Council.

Article 21 The State implements a unified commodity assessment system and, in accordance with the provisions of relevant laws and administrative regulations, carries out certification, inspection and quarantine in respect of imported and exported commodities.

Article 22 The State applies rules of origin to the imported and exported goods. The specific measures in this regard shall be formulated by the State Council.

Article 23 Where the import or export of cultural relics, wild animals and plants and their products are prohibited or restricted by the provisions of other laws or administrative regulations, the provisions of those laws and administrative regulations shall prevail.

Chapter IV International Trade in Services

Article 24 In respect of international trade in services, the People's Republic of China shall, in accordance with its commitments made in the international treaties or agreements it has signed or acceded to, grant the other signatories and acceding parties market access and national treatment.

Article 25 The department for foreign trade under the State Council and the relevant departments under the State Council shall, pursuant to the provisions of this Law and the relevant laws and administrative regulations, regulate international trade in services.

Article 26 For any of the following reasons, the State may restrict or prohibit the relevant international trade in services:

- (1) restrictions or prohibitions are needed for safeguarding State security and public interests and ethics;
- (2) restrictions or prohibitions are needed for protecting human health or safety, the lives or health of animals and plants, or the environment;
- (3) restrictions are needed for establishing or speeding up the establishment of a particular domestic service industry;
- (4) restrictions are needed for maintaining the balance of receipts and payments of the State in foreign exchanges;
- (5) restrictions or prohibitions are needed for other reasons, as laws and administrative regulations so provide; or
- (6) restrictions or prohibitions are needed for other reasons, as required by the provisions of the international treaties or agreements which China has signed or acceded to.

Article 27 With regard to military-related international trade in services, and international trade in services related to fissile and fusion material or the substances from which such material is derived, the State may adopt any necessary measure to safeguard State security. In wartime or for the purpose of preserving international peace and security, the State may adopt any necessary measure in respect of international trade in services.

Article 28 The department for foreign trade under the State Council shall, in conjunction with the relevant departments under the State Council and in accordance with the provisions in Articles 26 and 27 of this Law and relevant laws and administrative regulations, formulate, adjust and publish the market access

catalogue of international trade in services.

Chapter V Protection of Trade-Related Aspects of Intellectual Property Rights

Article 29 The State protects trade-related intellectual property rights in accordance with the laws and administrative regulations concerning intellectual property rights. Where any imported goods infringe upon intellectual property rights and impair foreign trade order, the department for foreign trade under the State Council may take such measures as prohibiting, for a specified period of time, the import of the relevant goods produced or sold by the infringer.

Article 30 Where the owner of a intellectual property right commits any of the acts, such as preventing the licensee from challenging the validity of the intellectual property right in the licensing contract, imposing mandatory package licensing on the licensee or incorporating exclusive grant-back conditions in the licensing contract, which undermines the order of fair competition in foreign trade, the department for foreign trade under the State Council may take any necessary measures to eliminate the harm done.

Article 31 If any country or region fails to grant the legal persons, other organizations or individuals from the People's Republic of China national treatment in respect of protection of intellectual property rights, or cannot adequately and effectively protect the intellectual property rights in respect of the goods, technologies or services from the People's Republic of China, the department for foreign trade under the State Council may, in accordance with the provisions of this Law and the relevant laws and administrative regulations, and the international treaties or agreements which the People's Republic of China has signed or acceded to, take any necessary measures in respect of trade with the country or region in question.

Chapter VI Foreign Trade Order

Article 32 In foreign trade activities, monopolistic behavior in violation of the provisions of the laws and administrative regulations against monopoly is not allowed.

In foreign trade activities, any monopolistic behavior that jeopardizes fair market competition shall be dealt with in accordance with the provisions of the laws and administrative regulations against monopoly. In the event that violations as mentioned in the preceding paragraph are committed, which undermine foreign trade order, the department for foreign trade under the State Council may take any necessary measures to eliminate the harm done.

Article 33 In foreign trade activities, no one may engage in unfair competition, such as selling commodities at unreasonably low prices, colluding with another person in a tender, publishing false advertisements and practising commercial bribery. Any unfair competition in foreign trade activities shall be dealt with in accordance with the provisions of laws and administrative regulations against unfair competition. In the event that violations as mentioned in the preceding paragraph are committed, which undermine foreign trade order, the department for foreign trade under the State Council may take any measures such as prohibiting the dealer from importing and exporting relevant goods and technologies to eliminate the harm done.

Article 34 In foreign trade activities, none of the following acts may be committed:

(1) forging or falsifying marks of origin of imported or exported goods; forging, falsifying or dealing in

- origin certificates of imported or exported goods, import or export licenses, certificates of import or export quotas, or any other import or export certificates;
- (2) obtaining export tax refund by fraudulent means;
 - (3) smuggling;
 - (4) evading certification, inspection or quarantine which is required by laws and administrative regulations; or
 - (5) other acts in violation of the provisions of laws and administrative regulations.

Article 35 In foreign trade activities, foreign trade dealers shall act in compliance with the regulations of the State governing foreign exchange control.

Article 36 The department for foreign trade under the State Council may make known to the public any violations of this Law, which undermine foreign trade order.

Chapter VII Foreign Trade Investigation

Article 37 To maintain foreign trade order, the department for foreign trade under the State Council may, on its own or jointly with the relevant departments under the State Council, investigate the following matters in accordance with the provisions of laws and administrative regulations:

- (1) the impact on domestic industries and their competitiveness exerted by the imported and exported goods, imported or exported technologies, and international trade in services;
 - (2) trade barriers erected by relevant countries or regions;
 - (3) matters needing to be investigated in order to determine whether such foreign trade remedies as anti-dumping, countervailing duties and safeguards should be taken in accordance with law;
 - (4) acts circumventing foreign trade remedies;
 - (5) matters concerning State security and interests in foreign trade;
 - (6) matters needing to be investigated in order to enforce the provisions in Article 7, the second paragraph of Article 29, Articles 30 and 31, the third paragraph of Article 32 and of Article 33; and
 - (7) other matters that may have an impact on foreign trade order.
- Article 38 The initiation of a foreign trade investigation shall be announced by the department for foreign trade under the State Council.

The investigation may be conducted in the form of written questionnaire, hearing, on-the-spot investigation, entrusted investigation, etc. The department for foreign trade under the State Council shall, based on the findings, submit an investigation report or make a ruling, and make the matter known to the public.

Article 39 The units and individuals concerned shall cooperate and assist in foreign trade investigation. The department for foreign trade under the State Council and the relevant departments under the State Council and their staff members shall have the obligation to keep confidential the State secrets and business secrets they come to know in the course of foreign trade investigation.

Chapter VIII Foreign Trade Remedies

Article 40 The State may, based on the findings of foreign trade investigation, take appropriate measures of foreign trade remedies.

Article 41 Where a product from another country or region is dumped into the domestic market at a price lower than its normal value, thus causing or threatening to cause substantive damage to an established

domestic industry, or presenting a substantive impediment to the establishment of a domestic industry, the State may take anti-dumping measures to eliminate or mitigate such damage, threat of damage, or impediment.

Article 42 Where a product from another country or region is exported to the market of a third country at a price lower than its normal value, thus causing or threatening to cause substantive damage to an established domestic industry, or presenting a substantive impediment to the establishment of a domestic industry, the department for foreign trade under the State Council may, in response to the application submitted by the domestic industry, conduct consultations with the government of that third country and request it to take appropriate measures.

Article 43 Where an imported product to which specific subsidies of any form are directly or indirectly granted by the exporting country or region causes or threatens to cause substantive damage to an established domestic industry, or presents a substantive impediment to the establishment of a domestic industry, the State may take countervailing measures to eliminate or mitigate such damage or threat of damage, or impediment.

Article 44 Where the substantial increase in the quantities of an imported product causes or threatens to cause serious damage to a domestic producer of like product or a manufacturer of a product directly competitive to the imported one, the State may take the necessary safeguard measures to eliminate or mitigate such damage or threat of damage and, at the same time, provide the industry concerned with the necessary support.

Article 45 Where the increase in the services provided to China by the service supplier of another country or region causes or threatens to cause damage to the domestic industry that provides like or directly competitive services, the State may take the necessary remedies measures to eliminate or mitigate such damage or threat of damage.

Article 46 Where the substantial increase in the quantities of a certain product imported into the domestic market, as a result of the restrictions imposed by a third country on its import, causes or threatens to cause damage to an established domestic industry, or presents a impediment to the establishment of a domestic industry, the State may take the necessary remedies measures to restrict the import of the said product.

Article 47 Where a country or region that has signed or jointly acceded to the economic and trade treaties or agreements with the People's Republic of China violates the provisions of such treaties and agreements and thus causes losses or damage to the interests the People's Republic of China is entitled to under these treaties and agreements, or impedes the achievement of the objectives set in the treaties and agreements, the government of the People's Republic of China has the right to request the government of the country or region concerned to take appropriate remedies measures and may suspend or terminate its performance of relevant obligations in compliance with the relevant treaties and agreements.

Article 48 The department for foreign trade under the State Council shall, in accordance with the provisions of this Law and relevant laws, carry out bilateral or multilateral foreign trade consultations and negotiations and settle disputes over such trade.

Article 49 The department for foreign trade under the State Council and the relevant departments under the State Council shall establish precaution and emergency mechanism for the import and export of goods and of technologies and for the international trade in services to cope with unexpected and unusual situations in foreign trade and safeguard the economic security of the State.

Article 50 The State may take the necessary anti-circumvention measures against the activities that circumvent the foreign trade remedies measures prescribed in this Law.

Chapter IX Promotion of Foreign Trade

Article 51 The State formulates strategies for the development of foreign trade, and establishes and improves the mechanism for promoting foreign trade.

Article 52 The State, in light of the need for the development of foreign trade, establishes and improves financial institutions in the service of foreign trade and establishes development fund and risk fund for foreign trade.

Article 53 The State develops foreign trade by means of import and export credit, export credit insurance, export tax refund and other means designed to promote foreign trade.

Article 54 The State establishes a system of public information service for foreign trade, providing foreign trade dealers and the public with information services.

Article 55 The State takes measures to encourage foreign trade dealers to exploit international market, and extend foreign trade by a variety of means such as investment abroad, contract for foreign construction projects and overseas labor service cooperation.

Article 56 Foreign trade dealers may establish or join relevant associations or chambers of commerce in accordance with law. The relevant associations and chambers of commerce shall observe laws and administrative regulations; in compliance with their articles of association, provide their members with foreign-trade-related services in production, marketing, information, training, etc.; play the role of coordination and self-discipline; submit applications for foreign trade remedies measures according to law; safeguard the interests of their members and the industry; report to relevant government departments suggestions made by their members regarding foreign trade; and carry out activities for promotion of foreign trade.

Article 57 The organization for the promotion of international trade in China shall, in accordance with its articles of association, develop external relations, hold exhibitions, provide information and advisory services and carry out other activities to promote foreign trade.

Article 58 The State supports and facilitates small and medium-sized enterprises to develop foreign trade.

Article 59 The State supports and promotes the development of foreign trade in ethnic autonomous regions and economically under-developed areas.

Chapter X Legal Responsibility

Article 60 The department for foreign trade under the State Council or the relevant department under the State Council may impose a fine of not more than RMB 50,000 yuan on enterprise that, in violation of the provisions in Article 11 of this Law and without authorization, imports or exports the goods subject to control of State-operated trading, and if the circumstances are serious, it may, within three years from the date the administrative penalty decision takes effect, refuse to accept the application submitted by the offender for engaging in the business of import and export of the goods subject to control of State-operated trading , or may withdraw the authorization granted to the offender for the import and export of other goods subject to control of State-operated trading.

Article 61 Any dealer who imports or exports the goods the import and export of which are prohibited or, without authorization, imports or exports the goods import and export of which are restricted shall be dealt with and penalized by the Customs in accordance with the provisions of relevant laws and administrative regulations; if its act constitutes a crime, it shall be investigated for criminal responsibility according to law. Any dealer who imports or exports the technologies the import and export of which are prohibited or, without authorization, imports or exports the technologies the import and export of which are restricted shall be dealt with and penalized in accordance with the provisions of relevant laws and regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than 10,000 yuan, a fine of not more than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law. Within three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding two paragraphs, the department for foreign trade under the State Council or the relevant department under the State Council may refuse to accept the application submitted by the offender for import or export quotas or license, or prohibit the offender from engaging in the import or export of relevant goods and technologies for a period of not less than one year but not more than three years.

Article 62 Any dealer that engages in the international trade in services subject to prohibition or, without authorization, engages in the international trade in services subject to restriction shall be penalized in accordance with the provisions of relevant laws and administrative regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than 10,000 yuan, a fine of not less than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law. The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant international trade in services for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding paragraph.

Article 63 Any dealer that violates the provisions in Article 34 of this Law shall be penalized in accordance with the provisions of relevant laws and administrative regulations. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant foreign trade activities for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in

the preceding paragraph.

Article 64 During the period of time in which a foreign trade dealer is prohibited, in accordance with the provisions in Articles 61, 62 and 63 of this Law, from engaging in the relevant foreign trade activities, the Customs shall, in accordance with the prohibition decision made by the department for foreign trade under the State Council according to law, refuse to process the procedures of declaration, inspection and release for the relevant goods imported or exported by the said dealer, and the foreign exchange control department or the designated foreign exchange bank shall not handle the exchange settlement or sale for it.

Article 65 Where a staff member of the department responsible for foreign trade administration in accordance with this Law neglects his duties, commits irregularities for personal gain or abuses his power, which constitutes a crime, he shall be investigated for criminal responsibility. If his act is not serious enough to constitute a crime, he shall be given an administrative sanction according to law. Where a staff member of the department responsible for foreign trade administration in accordance with this Law, taking advantage of his position, extorts money or things of value from another person or illegally accepts another person's money or things of value in order to seek benefits for that person in return, which constitutes a crime, he shall be investigated for criminal responsibility in accordance with law. If his act is not serious enough to constitute a crime, he shall be given an administrative sanction according to law.

Article 66 Any party engaged in foreign trade activities, who is not satisfied with the specific administrative act by the department responsible for foreign trade administration in accordance with this Law, may apply for administrative reconsideration or bring an administrative lawsuit before the people's court in accordance with law.

Chapter XI Supplementary Provisions

Article 67 Where other laws and administrative regulations provide otherwise in respect of foreign trade administration of military supplies, fissionable or fusionable material or the substances from which such material is derived and the administration of the import and export of cultural products, the provisions there shall prevail.

Article 68 The State adopts flexible measures, and provides preferential treatment and convenience to trade between the border areas of China and those of its neighboring countries as well as trade among border residents. The specific measures in this regard shall be formulated by the State Council.

Article 69 This Law is not applicable to the separate customs territories of the People's Republic of China.

Article 70 This Law shall go into effect as of July 1, 2004.