

Foreign Trade Law of the People's Republic of China

(Adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress on May 12, 1994, promulgated by Order No. 22 of the President of the People's Republic of China on May 12, 1994, and effective as of July 1, 1994)

Chapter I General Provisions

Article 1 This Law is formulated for the purpose of developing foreign trade, vindicating the foreign trade order, and promoting the sound development of the socialist market economy.

Article 2 In this Law, foreign trade refers to import and export of commodities and technology as well as international service trade.

Article 3 The competent department of foreign economic relations and trade of the State Council shall be in charge of the national foreign trade according to this Law.

Article 4 The State shall pursue a unified scheme of foreign trade, and uphold according to law a fair and free foreign trade order.

The State shall encourage the development of foreign trade, bring the initiative of the local authorities into full play, and guarantee the independent operational rights of the foreign trade operators.

Article 5 The People's Republic of China shall, in conformity with the principle of equality and mutual benefit, promote and develop trading relationship with other countries and regions.

Article 6 In the respect of foreign trade, the People's Republic of China shall, according to the international treaties or agreements which she has concluded or acceded to, accord other signatories or acceding parties, or according to the principle of reciprocity, accord the other side, the most-favoured-nation treatment or the national treatment.

Article 7 Where any state or region adopts discriminative prohibition, restriction, or any other similar measures to the People's Republic of China in trading connection, the People's Republic of China may, in the light of specific circumstances, adopt corresponding measures to that state or region.

Chapter II Foreign Trade Operators

Article 8 In this Law, foreign trade operators refer to either legal persons or other organizations which engage in foreign trade business according to the provisions of this Law.

Article 9 Those who intend to be a foreign trade operator to engage in import and export of commodities or technology shall meet the following requirements and obtain the permit from the competent department of foreign economic relations and trade of the State Council:

- (1) having its own name and structural organs;
- (2) having a definite business scope of foreign trade;
- (3) having the site, funds and specialized personnel as required for the business;
- (4) having made the provided achievements in business of import and export through commissioning others therewith, or having sources of goods essential for the business of import and export; and
- (5) other requirements prescribed by laws or regulations.

Measures for the implementation of the provisions of the preceding paragraph shall be formulated by the State Council.

Foreign investment enterprises shall be exempted from the procedure provided for in the First Paragraph when they, according to the provisions of laws and regulations concerning foreign investment enterprises, import non-productive articles for their own use, import equipment, raw materials, and other goods and materials needed for their production, or export their products.

Article 10 The establishment and business activities of enterprises and organizations in international service trade shall comply with the provisions of this Law and other relevant laws and regulations.

Article 11 A foreign trade operator shall engage in business on its own, and assume sole responsibility for its profits and losses according to law.

Article 12 In their foreign trade activities, foreign trade operators shall abide by their contracts, ensure the quality of commodities, and perfect the service after selling.

Article 13 Organizations or individuals without the permit of foreign trade business may commission a domestic foreign trade operator to handle their foreign trade business within the business scope of the operator.

The foreign trade operator who has accepted the commission shall provide the commissioning party accurately the relevant business

information such as the market quotations, the prices of commodities and the customer's situation, etc. The commissioning and commissioned parties shall conclude a commission contract, in which the rights and obligations of both parties shall be specified.

Article 14 Foreign trade operators shall, in accordance with the provisions of the competent department of foreign economic relations and trade of the State Council, submit to the competent departments documents and records relating to their foreign trade business. The competent departments shall keep the trade secrets for the provider.

Chapter III Import and Export of Commodities and Technology

Article 15 Subject to provisions otherwise stipulated in the relevant laws and regulations, the State shall permit free import and export of commodities and technology.

Article 16 The State may impose restrictions on the import or export of the commodities and technology coming under the following categories:

- (1) those the import or export of which needs to be restricted in the light of the national security or the social and public interests;
- (2) those the export of which needs to be restricted in consideration of the shortage in domestic market or for a significant protection of the resources which may be exhausted in the country;
- (3) those the export of which needs to be restricted in consideration of the market capacity of the destination country or region;
- (4) those the import of which needs to be restricted for the purpose of building or speeding up the building of the specific domestic industry;
- (5) those agricultural, stock or fishery products in any form whose import needs to be restricted;
- (6) those the import of which needs to be restricted for the purpose of ensuring the international financial standing of the State and/or in consideration of the balance between international income and expenditure of the state; and
- (7) those the import or export of which shall be restricted according to the provisions of any international treaty or agreement concluded or acceded to by the People's Republic of China.

Article 17 The State shall prohibit the import or export of the commodities and technology coming under the following categories:

- (1) those which will endanger the national security or those which

are prejudicial to the social and public interests;

(2) those which must be prohibited from import or export in need of protecting human life or health;

(3) those which will destroy the ecological environment; and

(4) those which shall be prohibited from import or export according to the provisions of any international treaty or agreement concluded or acceded to by the People's Republic of China.

Article 18 The competent department of foreign economic relations and trade of the State Council shall, jointly with other departments concerned of the State Council and according to the provisions of Article 16 and 17 of this Law, formulate, adjust and publish a list of commodities and technology whose import or export shall be restricted or prohibited.

The competent department of foreign economic relations and trade of the State Council may, by itself or jointly with other departments concerned of the State Council, with the approval of the State Council, make a decision at the last moment to restrict or prohibit the import or export of certain specific commodities and technology which fall in categories listed in Article 16 and 17 of this Law but are not included in the list as mentioned in the preceding paragraph.

Article 19 Those commodities whose import or export is restricted shall be administered by a quota or license system; those technology whose import or export is restricted shall be administered by a license system.

The commodities and technology which are administered with a quota or license system may be imported or exported only after the competent department of foreign economic relations and trade of the State Council has, by itself or jointly with other departments concerned of the State Council, permitted in accordance with the provisions of the State Council .

Article 20 Import and export quotas shall be allotted on the principle of benefit, impartiality, openness and fair competition and in the light of the situations of the applicants such as the achievements and capacity of import and export and so on by the competent department of foreign economic relations and trade or other departments concerned of the State Council within their respective authority.

The way and measures in and with which the quotas be allotted shall be prescribed by the State Council.

Article 21 Where any other laws or regulations impose prohibitions or restrictions on import and export of any goods or articles such as cultural relics, wild animals and plants and the products thereof and so

on, those laws or regulations shall be applied.

Chapter IV International Service Trade

Article 22 The State shall promote the development of international service trade step by step.

Article 23 In regard of international service trade, the People's Republic of China shall, according to the promise made in the international treaties or agreements which she has concluded or acceded to, accord market access and the national treatment to the other signatories and acceding parties of the treaties or agreements.

Article 24 The State may impose restrictions on some international service trade for the purpose of

- (1) safeguarding the national security or the social and public interests;
- (2) protecting the ecological environment;
- (3) building or speeding up the building of any certain domestic service trade;
- (4) ensuring the balance between the foreign exchange income and expenditure of the State; or
- (5) other purposes prescribed by laws or regulations.

Article 25 The State shall impose prohibitions on the international service trade coming under the following categories:

- (1) those which will endanger the national security or whose which are prejudicial to the social and public interests;
- (2) those which are contrary to the international obligations of the People's Republic of China; and
- (3) those which are prohibited by any other law or regulations.

Article 26 The competent department of foreign economic relations and trade and other departments concerned of the State Council shall, in accordance with the provisions of this Law and other relevant laws and regulations, conduct administration on international service trade.

Chapter V Foreign Trade Order

Article 27 In their foreign trade activities, foreign trade operators shall do business according to law, take fair competition, and shall not commit any of the following acts:

(1) forging, altering or trafficking certificate of origin or import or export license;

(2) infringing on any intellectual property protected by laws of the People's Republic of China;

(3) squeezing out other competitors through unfair practices;

(3) cheating the State out of drawback; or

(4) other acts that violate laws and regulations.

Article 28 In their foreign trade activities, foreign trade operators shall convert and expend foreign exchanges according to the relevant provisions of the State.

Article 29 Where the increase of import of any products causes or threatens to cause serious injury to any domestic producer of like products or products of a direct competitive relationship, the State may adopt necessary protective measures to eliminate or alleviate the injury or the threat of injury.

Article 30 Where any products are imported at a price lower than their normal value, and so cause or threaten to cause material injury to any existing relative domestic industry, or bring material obstruction to the establishment of any relative domestic industry, the State may adopt necessary measures to eliminate or alleviate the injury, the threat of injury or the obstruction.

Article 31 Where any imported products are directly or indirectly subsidized by the export country in any form, and so cause or threaten to cause material injury to any existing relative domestic industry, or bring material obstruction to the establishment of any relative domestic industry, the State may adopt necessary measures to eliminate or alleviate the injury, the threat of injury or the obstruction.

Article 32 Where any circumstances as specified in Article 29, 30 and 31 occur, the department or agency specified by the State Council shall make an investigation and settlement according to the provisions of laws and regulations.

Chapter VI Promotion of Foreign Trade

Article 33 The State shall, according to the need of developing of foreign trade, establish and improve financial institutions serving foreign trade, and set up the development and risk foundations for foreign trade.

Article 34 The State shall develop foreign trade by taking foreign trade promotion measures such as import and export credit, export drawback and others.

Article 35 Foreign trade operators may establish and join Chamber of Commerce of Importers and Exporters according to law.

A Chamber of Commerce of Importers and Exporters shall abide by laws and regulations, and conduct coordination and direction over the foreign trade activities of its members, provide consulting service, convey to the government departments the proposals of its members concerning the promotion of foreign trade and take vigorous action to promote foreign trade according to its constitution.

Article 36 The Chinese organization for the promotion of international trade shall, according to its constitution, develop foreign connections, hold exhibitions, provide information and consulting service, and take other action to promote foreign trade.

Article 37 The State shall promote and give aid to the development of foreign trade of the national autonomous localities and undeveloped regions.

Chapter VII Legal Responsibility

Article 38 Those who smuggle goods whose import or export is restricted or prohibited shall, when the circumstances are serious enough to constitute a crime, be prosecuted for the criminal responsibility in accordance with the Supplementary Provisions Concerning the Punishment of the Crimes of Smuggling, and, when it does not constitute a crime, be punished in accordance with the provisions of the Customs Law. The competent department of foreign economic relations and trade of the State Council may in addition revoke their business permit of foreign trade.

Article 39 Those who forge or alter certificates of origin or licenses of import or export shall be prosecuted for the criminal responsibility in accordance with the provisions of Article 167 of the Criminal Law; those who traffic certificates of origin or licenses of import or export, or traffic forged or altered certificates of origin or licenses of import or export, shall be prosecuted for the criminal responsibility by applying mutatis mutandis the provisions of Article 167 of the Criminal Law.

Where the offender is an organization, that organization shall be

sentenced to a fine, while the directly responsible person in charge and other directly responsible person shall be prosecuted for the criminal responsibility in accordance with, or by applying *mutatis mutandis*, the provisions of Article 167 of the Criminal Law. The competent department of foreign economic relations and trade of the State council may in addition revoke its business permit of foreign trade.

Those who know well that the import or export license is forged or altered and import or export goods thereby shall be punished in accordance with the provisions of Article 38 of this Law.

Article 40 Those who, in violation of the provisions of this Law, import or export technology whose import or export is prohibited or restricted, shall, when the circumstances are serious enough to constitute a crime, be prosecuted for the criminal responsibility by applying *mutatis mutandis* the provisions of the Supplementary Provisions Concerning the Punishment of Crimes of Smuggling.

Article 41 Any foreign trade functionary who neglects his duties, engages in malpractice out of personal considerations or abuses his power shall, when the circumstances are serious enough to constitute a crime, be prosecuted for the criminal responsibility according to law, and, when it does not constitute a crime, be given an administrative sanction.

Any foreign trade functionary who takes advantage of his office to ask for a bribe or accept a bribe from a person and seek interests for him shall, when the circumstances are serious enough to constitute a crime, be prosecuted for the criminal responsibility in accordance with the provisions of the Supplementary Provisions Concerning the Punishment of Crimes of Embezzlement and Bribery, and, when it does not constitute a crime, be given an administrative sanction.

Chapter VIII Supplementary Provisions

Article 42 The State shall adopt flexible measures with the frontier trade between border towns of China and those of China's neighboring countries and with the frontier trade between border inhabitants of China and those of China's neighboring countries, and give them favorable treatment and convenience. The particular measures shall be formulated by the State Council.

Article 43 This Law shall not apply to the separate customs regions of the People's Republic of China.

Article 44 This Law shall become effective on July 1, 1994.

Annex: The Relevant Article of the Criminal Law

Article 167 Whoever forges, alters, steals, forcibly seizes or destroys the official documents, certificates or seals of state organs, enterprises, institutions or people's organizations shall be sentenced to a fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to a fixed-term imprisonment of not less than three years and not more than t