

DRAFT LAW ON FOREIGN TRADE
May 2002, Skopje

I. GENERAL PROVISIONS

Article 1

This Law shall govern foreign trade operations, in particular, terms of conduct of foreign trade, carrying out commercial activities abroad and import and export safeguard measures.

Article 2

For the purposes of this Law:

- ***threat of serious injury*** - shall be understood to mean serious injury to the position of the domestic industry that is clearly imminent.
- ***serious injury*** – shall be understood to mean a significant overall impairment in the position of a domestic industry.
- ***injury*** – shall be understood to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of such industry.
- ***domestic industry*** – shall be understood to mean the domestic producers of the like or directly competitive products operating within the territory of the Republic of Macedonia, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.
- ***subsidized imports*** – shall be understood to mean goods imported in the Republic of Macedonia that are subject to indirect or direct support of the production or export by the country of origin or export.
- ***dumping*** – shall be understood to mean goods imported in the Republic of Macedonia at less than their normal value.
- ***antidumping duties*** – shall be understood to mean duties in amount not to exceed the dumping margin of the goods in question.
- ***dumping margin*** - shall be understood to mean the difference between the normal price and the dumped import price of the goods in question.
- ***normal value for the purposes of dumping*** - shall be understood to mean the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country .

Article 3

Trade companies and other legal entities (hereinafter referred to as “company(ies)”) registered for trading may engage in foreign trade and commercial activities abroad.

Article 4

The right to conduct foreign trade operations shall be acquired by virtue of entering a company into the Trade Registry on the date of such registration.

II. TERMS FOR CONDUCT OF FOREIGN TRADE OPERATIONS

Imports and Exports

Article 5

Imports and exports of goods shall be free (LB).

Particular goods may be imported or exported subject to a licence (D) in cases of enforcement of international agreement, imports and exports of arms and military equipment and imports and exports of historic and works of art and certain precious metals.

In order to put trade in goods and services in conformity with certain countries and regions, imports and exports of particular products may be subject to approval for regional allocation.

Import and export licences as required by international agreements, licences for import and export of certain precious metals and the approval referred to in paragraph 3 of this Article are issued by the Ministry of Economy.

Import and export licences for arms and military equipment are issued by the Ministry of Defense, and the import and export licences for historic and works of art are issued by the Ministry of Culture.

Article 6

The Government of the Republic of Macedonia (hereinafter referred to as the “Government”) classifies goods in types of import and export and determines for which goods imports and exports are regionally directed.

Article 7

Companies may enter into contracts with foreign persons for the purpose of representing foreign persons in the Republic of Macedonia or for trading with foreign goods from consignment storages, exclusive of goods subject to payment of excise taxes pursuant to law.

The contracts referred to in paragraph 1 of this Article shall be concluded in writing and recorded at the Ministry of Economy.

The companies referred to in paragraph 1 of this Article shall provide service, supplies, equipment and spare parts for maintaining the imported equipment and the durable goods for

personal consumption in compliance with the regulations governing trade in goods on domestic markets, over a period not less than three years.

The companies referred to in paragraph 1 of this Article may entrust the provision of services with other domestic companies or entrepreneurs.

A company engaging in provision of services in the foreign trade may represent foreign persons for the type of services that it provides in the foreign trade without being registered in the trade Registry for representation of foreign persons.

The Government prescribes in detail the terms for conduct of the activities referred to in paragraph 1 of this Article.

Intermediation

Article 8

A company may freely purchase goods abroad and import or temporarily import such goods for the purpose of re-export, or directly trade with such goods abroad (intermediation).

The Ministry of Economy shall approve the activities from paragraph 1 of this Article provided that they do not disturb the regular export of goods, or they ensure higher use of the production capacities, or fall under international agreements, or provide increased inflow of foreign currencies traded on the foreign exchange market, or decrease the due outstanding claims of certain countries, or balance the trade.

Import and Export Protection Measures

Measures Introduced to Protect Domestic Production Against Increased Imports

Article 9

The Government may apply a relevant safeguard measure (hereinafter referred to as “measures”) to a product only if it has determined that such product is being imported in such increased quantities, absolute or relative to the domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Measures referred to in paragraph 1 of this Article shall be applied to all imported products irrespective of their source.

Measures referred to in paragraph 1 of this Article may be applied only if the existence of the causal link between an increased import of the product and serious injury and threat thereof for domestic production is determined in an investigation.

Should the investigation referred to in paragraph 3 of this Article demonstrate that factors other than the increased imports are causing injury to the domestic industry at the same time,

such injury shall not be attributed to the increased imports and the measures referred to in paragraph 1 of this Article shall not be applied.

The procedure referred to in paragraph 3 of this Article shall be administered by the Ministry of Economy. All interested parties – importers and exporters shall be invited during the procedure, to participate in a public debate or express, in some other appropriate way, their attitudes and submit evidence justifying the need for the imposition of the safeguard measures.

The Ministry of Economy, in the investigation referred to in paragraph 3 of this Article, shall evaluate all facts and evidence, in particular: the status of a particular production industry; the total increase in imports of certain goods in absolute or relative amount; the conditions on the domestic market after the increased imports; the utilization of the production capacities; the status of profit or loss; the influence of the increased imports on the employment rates in a particular production industry; and other circumstances relevant to the evaluation of the status of the domestic production of such goods.

The Ministry of Economy shall, during the investigation, publish a report with findings and conclusions, in compliance with this Law and the regulations adopted thereunder.

The Ministry of Economy shall treat responsibly data collected during the investigation that are confidential for certain companies and may not publish such data without prior approval by such companies. If concluded as necessary for administering the investigation, the Ministry of Economy may request that people, who dispose of confidential data, submit an excerpt from or give an explanation of such confidential data; or if they refuse to do so, that they give a clarification for the reasons thereof.

Should the Ministry of Economy conclude that the requirement for confidentiality of data is not justified, and the interested party is not willing to publish the data completely or in part, the Ministry of Economy may decide not to take into consideration such data and check their authenticity from other sources.

Article 10

If the delay in introducing safeguard measures caused an injury difficult to repair, or there is clear evidence that the increased imports have caused or threaten to cause serious injury to the domestic industry, the Government may, upon proposal by the Ministry of Economy, prescribe a provisional safeguard measures in a form of retroactive tariff increases (customs duty as safeguard).

Customs Administration is the authority in charge of collecting safeguard customs duties.

The duration of the provisional measure referred to in paragraph 1 of this Article shall not exceed 200 days. During that period, the Ministry of Economy shall initiate an investigation in conformity with Article 9 of this Law.

Such measures that take the form of tariff increases should be promptly refunded to the importers concerned if the subsequent investigation does not determine that the increased imports have caused or threaten to cause injury to the domestic industry.

The duration of any such provisional measure shall be counted as a part of the total duration of the measures taken under Article 9 of this Law.

Article 11

Safeguard measures under Article 9 of this Law shall be applied only for such period of time as may be necessary to prevent or remedy serious injury and shall not exceed the period of four years.

Notwithstanding paragraph 1 of this Article, the duration of the measure may be extended provided that the Ministry of Economy has determined that the safeguard measure continues to be necessary to prevent or remedy the serious injury. In such a case, the measure may not be more restrictive than the present measure.

The Ministry of Economy shall monitor the effects of the measure under paragraph 1 of this Article and if necessary, propose to the Government to liberalize it.

The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

Where the expected duration of the safeguard measure referred to in Article 9 is over one year, the Government shall progressively liberalize the measure in equal time intervals during the period of application.

If the duration of the measure exceeds three years, the Government shall review its effects and estimate if there are conditions for its liberalization or withdrawal not later than the mid-term of the measure.

Article 12

The Government shall not apply safeguard measures to the import of a product that has already been subject to such a measure.

Notwithstanding paragraph 1 of this Article, the said product may be subject to a safeguard measure upon expiration of a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

In exceptional cases, the Government may prescribe again safeguard measures with duration of 180 days or less to the import of a product if at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product and if such a safeguard measure has not been applied on the same product more than twice in the past five year period.

Article 13

In case of introduction of measures under Article 9 of this Law, the Government may agree to grant adequate trade compensation for the adverse effects that the application or the extension of a safeguard measure in the Republic of Macedonia may have on the trade of other countries.

Article 14

The Minister of Economy shall prescribe in detail the procedures for implementation of measures under Articles 9, 10, 11 and 12 of this Law.

Quantitative Restrictions and Restrictions in Value (Quotas)

Article 15

If it is determined that the increased import of certain goods may disturb the balance of payments of the Republic of Macedonia, or if such increased imports cause or threaten to cause serious injury to the domestic industry, the Government may, upon a proposal by the Ministry of Economy, impose safeguard measures in a form of quantitative restrictions or restrictions in value (quotas) on the import of such goods.

Article 16

The Government may, upon a proposal of the Ministry of Economy, impose safeguard measures in the form of quantitative restrictions or restrictions in value (quotas), when the increased export of certain goods may cause or threaten to cause injury to the exhaustible natural resources of the Republic of Macedonia, provided that the measures, concurrently, limit the trade of such goods in the Republic of Macedonia.

Article 17

When the Government prescribes quantitative or value restrictions on goods, along with the measures pertaining to Article 9 of this Law, the volume of goods may not be smaller than the average annual imports of such goods in the course of the last three years.

If distribution of the goods referred to in paragraph 1 of this Article is made among several countries, the Government may arrange the manner of distribution of these goods with the WTO member countries that are particularly interested in exporting the said goods in the Republic of Macedonia, and their share in the distribution. If it is determined that such manner of distribution is not appropriate, the determined volume of goods shall be distributed in equal shares to the countries importers of the total import of certain goods in the Republic of Macedonia over a certain time period, taking into account all other important circumstances that influence or may influence the imports of such goods.

Notwithstanding paragraph 2 of this Article, the Government may change the manner of distribution of goods if:

- the import from a certain country member of the WTO increases unproportionally in relation to the total increase of the import of the particular goods in that period;

- there are justified reasons for deviation from the distribution of goods according to paragraph 2 of this Article, and
- the conditions for such deviations are equal towards all member countries of the WTO – suppliers of such goods.

The duration of the measures referred to in Article 9 of this Law may not be longer than the period set forth in Article 11 of this Law, notwithstanding a possible threat of injury to the domestic production.

Article 18

The Government shall prescribe the criteria, conditions and terms for distribution of goods under Articles 16 and 17 of this Law.

The distribution of goods under Articles 16 and 17 of this Law shall be administered by the Ministry of Economy, by issuing licences.

Quantitative restrictions and restrictions in value (quotas) shall determine the volume of import and export of certain goods for a period of one year.

The total quantity of goods per volume and/or value that needs to be distributed shall be published 21 days prior to the actual distribution.

If the distribution of the goods from paragraph 1 is carried out according to the country of origin, quotas shall be published 21 days prior to the actual distribution.

Public tenders shall be published in daily newspapers. A public tender shall contain the total quantity of goods that need to be distributed per volume and/or value, the initial and closing date of the tender, as well as the manner of distribution.

The period for processing applications for participation in distribution of quotas shall not exceed 30 days if licenses are issued on “first-come-first-served” basis, or 60 days after the closing of the application term, if all applications are considered simultaneously.

Licenses shall be issued within a reasonable time period.

Distribution of quotas shall be carried out on equal and regular basis.

During distribution of quotas, past shares in imports and interests of applicants shall be taken into consideration.

Applicants shall be informed about the performed distribution.

Applicants who have not been issued licenses shall be informed of the reasons in written and shall have the right to file a complaint with the relevant Government committee, unless otherwise arranged by international agreements ratified by the Republic of Macedonia.

Antidumping measures

Article 19

If a product is being imported into the territory of the Republic of Macedonia at a price lower than its normal value (dumped), and in an investigating procedure carried out by the Ministry of Economy it has been determined that this product causes or threatens to cause serious injury to the domestic production, the Government of the Republic of Macedonia may impose an antidumping duty on the import of that product.

A product is to be considered as being introduced into the commerce of the Republic of Macedonia at less than its normal value (dumped), if the export price of the product is less than the comparable price of the same product in the ordinary course of trade for consumption purposes in the exporting country.

If there is no available information about the comparable price, or when due to the specific conditions on the market or small trade exchange with certain goods in the exporting country, the available information does not provide relevant comparison, the antidumping duty shall be established by comparing the price of the imported product with:

- the price of the same product which is imported on a relevant market in a third country, provided that such price is relevant, or
- the costs of production in the country of origin increased by the usual amount for administrative fees, costs for sale, general costs and profit.

Article 20

Request for imposing an antidumping duty shall be submitted on behalf of all domestic producers of a certain product, or on behalf of those of them, whose collective production constitutes a major proportion of the total domestic production of those products.

The request shall be submitted in a written form to the Ministry of Economy.

If the Ministry of Economy decides that the request has been submitted by the producers referred to in Paragraph 1 of this Article or by a person who has been authorized by them, it shall initiate an investigating procedure. The request pertaining to paragraph 1 of this Article shall contain evidences of:

- the existence of dumped imports of certain goods.
- the injury caused by the dumped imports on the domestic production according to the Agreement on the Implementation of Article VI of GATT 1994
- the causal link between dumped imports and the injury caused by such imports to the domestic industry.

The Ministry of Economy may carry out the procedure without the written request by the producers, if there is enough evidence for existence of dumped imports, as well as for injury caused by the imports to the domestic industry and existence of the causal link between the dumped imports and the injury, which justify the procedure.

The antidumping duty referred to in Article 19 of this Law may not be higher than the dumping margin. The antidumping duty may be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry.

The antidumping duty shall remain in force as long as it is necessary to withhold the dumping which caused injury to the domestic industry. The Ministry of Economy, after a certain period of time, shall review the need for antidumping duty, upon its own initiative, or upon request by an interested party, if such party can justify the request for review of the antidumping duty.

The Government of the Republic of Macedonia shall prescribe the procedure and manner of determining an antidumping duty.

Measures against subsidized imports

Article 21

The Government may, upon a proposal by the Ministry of Economy, impose a countervailing duty on a product which is imported if:

- the product has benefited from a production or export subsidy in the country of origin or country of exportation, except in situations where the subsidy in question is non-actionable in accordance with relevant international agreement,
- the subsidized import cause or threaten to cause material injury to a domestic industry or may hamper the economic development.

Under this Article, the term countervailing duty shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise.

Article 22

A request for imposition of a countervailing duty shall be made by the domestic producers as a whole of the like product or the producers whose collective output constitutes the major part of the total domestic production of the like product.

The request shall be made in written form to the Ministry of Economy. An investigation shall not be initiated unless the Ministry has determined that the request was made by or on behalf of the domestic producers of the like product in the Republic of Macedonia referred to in paragraph 1 of this Article.

The request pertaining to paragraph 1 shall include sufficient evidence of:

- the existence of a subsidy and, if possible its amount;
- injury within the meaning of Article VI of GATT 1994
- causal link between the subsidized imports and the alleged injury.

The Ministry of Economy may decide to initiate an investigation without having

received a written request as provided in paragraph 1 of this Article by or on behalf of a domestic industry, if it has sufficient evidence of the existence of a subsidy, injury and causal link to justify the initiation of an investigation.

The Ministry of Economy shall, after the completion of the investigation, determine whether all requirements of the imposition of a countervailing duty have been fulfilled and whether the amount of this duty shall be the full amount of the subsidy or less. The duty may be less if such lesser duty would be adequate to remove the injury to the domestic industry.

The countervailing duty shall remain in force only as long as and to the extent necessary to counter-act subsidization that is causing injury. The Ministry of Economy shall review the need for the continued imposition of the duty, where warranted on its own initiative or upon request by an interested party which submits positive information substantiating the need for review.

The Government shall regulate the procedure and manner of determining the countervailing duty.

IV. INSPECTION

Article 23

Surveillance over the implementation of this Law and the regulations thereof shall be carried out by the Ministry of Economy.

The inspection over the implementation of the provisions of this Law shall be carried out by the State Market Inspectorate and other inspection and customs bodies, pursuant to their authority as provided by law.

V. PENALTY PROVISIONS

Article 24

A legal entity shall be levied with a fine amounting from 80.000 to 250.000 MKD for an offence, if:

- it engages in foreign trade activities without being registered in the Trade Registry (Article 4);
- when engaging in imports and exports, it does not abide to the regulation of the Government of the Republic of Macedonia that classifies goods in types of import and export (Article 6);
- it does not abide to the terms and conditions of the concluded agreement (Article 7);
- when importing goods, it does not abide to the protective, provisional, extended and repeated safeguard measures introduced for the purpose of eliminating the distortion (Articles 9, 10, 11 and 12);
- it imports and exports goods contrary to Articles 15, 16 and 17.

For the activities referred to in paragraph 1 of this Article, the responsible person with the legal entity shall, as well, be fined with a fine amounting from 10.000 to 50.000 MKD.

TRANSITIONAL AND FINAL PROVISIONS

Article 25

With coming into effect of this Law, the Law on Foreign Trade (Official Gazette of the Republic of Macedonia no.41/93, 78/93, 59/96, 15/97, 13/98, 13/99, 50/99, 82/99, 4/2002 and 2/2002) shall cease to be valid, exclusive of Articles 11a, 57a, 57b, 57g, 79, 84 item 11a and 87 item 1, which shall be applicable until 31 December 2005.

Article 26

This Law shall enter into force on the eighth day following the date of publication in the Official Gazette of the Republic of Macedonia.