

Foreign Trade Law of The People's Republic of China

Effective as of July 1st 2004

On April 6th 2004, the 8th Session of the Standing Committee of the 10th National People's Congress of China enacted the new Foreign Trade Law, which will be effective as of July 1st 2004:

Chapter 1 General Provisions

Chapter 2 Foreign Trade Dealers

Chapter 3 Import and Export of Goods and Technologies

Chapter 4 International Trade in Services

Chapter 5 Protection of Trade-related Aspects of Intellectual Property Rights

Chapter 6 Foreign Trade Order

Chapter 7 Foreign Trade Investigations

Chapter 8 Foreign Trade Remedies

Chapter 9 Foreign Trade Promotion

Chapter 10 Legal Liabilities

Chapter 11 Supplementary Provisions

Chapter 1 General Provisions

Article 1 This Law is formulated with a view to expanding the opening 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 applies to foreign trade and the protection of trade-related aspects of intellectual property rights. For the purposes of this Law, "foreign trade" refers to import and export of goods and technologies and the international trade in services.

Article 3 The authority responsible for foreign trade under the State Council is in charge of the administration of the foreign trade of the entire country pursuant to this Law.

Article 4 The State shall pursue a uniform foreign trade regime, encourage the development of foreign trade and maintain fair and free foreign trade order.

Article 5 The people's Republic of China shall, on the principle of equality and mutual benefit, promote and develop trade relations with other countries and regions, enter into or participate in such regional economic trade agreements as customs union agreement, free trade agreement and participate in regional economic organizations.

Article 6 The People's Republic of China shall, in accordance with the international treaties and agreements to which it is a contracting party or a participating party grant the other contracting parties or participating parties, or on the principle of reciprocity grant the other party most-favored-nation treatment or national treatment in the field of foreign trade.

Article 7 In the event that any country or region applies prohibitive, restrictive or other like measures on a discriminatory basis against the People's Republic of China in respect of trade, the People's Republic of China may, as the case may be, take counter-measures against the country or region in question.

Chapter 2 Foreign Trade Dealers

Article 8 For the purposes of this Law, "foreign trade dealers" refers to legal persons, other organizations or individuals that have fulfilled the industrial and commercial registration or other practicing procedures in accordance with laws and engage in foreign trade dealings in compliance with this Law and other relevant laws and administrative regulations.

Article 9 Foreign trade dealers engaged in import and export of goods or technologies shall register with the authority responsible for foreign trade under the State Council or its authorized bodies unless laws, regulations and the authority responsible for foreign trade under the State Council do not so require. The specific measures for registration shall be laid down by the authority responsible for foreign trade under the State Council. Where foreign trade dealers fail to register as required, the Customs authority shall not process the procedures of declaration, examination and release for the imported and exported goods.

Article 10 The international trade in services shall be carried out in compliance with the provisions of this Law and other relevant laws and administrative regulations. The units engaged in foreign contract of construction project or foreign labor cooperation shall be equipped with corresponding eligibility or qualification. The specific measures therefore shall be laid down by the State Council.

Article 11 The State may implement state trading on certain goods. The import and export of the goods subject to state trading shall be operated only by the authorized enterprises unless the state allows the import and export of certain quantities of the goods subject to state trading to be operated by the enterprises without authorization. The lists of the goods subject to state trading and the authorized enterprises shall be determined, adjusted and made public by the authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council. In the event of importation of the goods subject to state trading without authorization in violation of paragraph 1 of this Article, the Customs shall not grant

release.

Article 12 Foreign trade dealers may accept the authorization of others and conduct foreign trade as an agent within its scope of business.

Article 13 Foreign trade dealers shall, in accordance with the regulations laid down by the authority responsible for foreign trade under the State Council or other relevant authorities under the State Council in accordance with law, submit the documents and materials relevant to their foreign trade dealings to relevant authorities. The authorities concerned shall keep business secrets confidential for the providers thereof.

Chapter 3 Import and Export of Goods and Technologies

Article 14 The State permit free import and export of goods and technologies unless the laws or administrative regulations provide otherwise.

Article 15 The authority responsible for foreign trade under the State Council may, in accordance with the need to supervise import and export, implement automatic import and export licensing certain goods subject to free import and export and make public the list thereof. Where the consignee or the consigner of the imported or exported goods subject to automatic licensing submits the automatic licensing application before going through the Customs declaration procedures, the authority responsible for foreign trade under the State Council or its authorized authorities shall grant approval. In case of failure to accomplish automatic licensing procedures, the Customs shall not grant release. In the case of importing or exporting technologies subject to free import and export, the contracts thereof shall be registered with the authority responsible for foreign trade under the State Council or its authorized authorities.

Article 16 The State may restrict or prohibit the import or export of relevant goods and technologies for the following reasons that:

- (1) the import or export needs to be restricted or prohibited in order to safeguard the state security, public interests or public morals,
- (2) the import or export needs to be restricted or prohibited in order to protect the human health or security, the animals and plants life or health or the environment,
- (3) the import or export needs to be restricted or prohibited in order to implement the measures relating to the importations and exportations of gold or silver,
- (4) the export needs to be restricted or prohibited in the case of domestic shortage in supply or the effective protection of exhaustible natural resources,
- (5) the export needs to be restricted in the case of the limited market capacity of the importing country or region,
- (6) the export needs to be restricted in the case of the occurrence of serious confusion in the export operation order,

- (7) the import needs to be restricted in order to establish or accelerate the establishment of a particular domestic industry,
- (8) the restriction on the import of agricultural, animal husbandry or fishery products in any form is necessary,
- (9) the import needs to be restricted in order to maintain the State's international financial status and the balance of international payment,
- (10) the import or export needs to be restricted or prohibited as laws and administrative regulations so provide, or
- (11) the import or export needs to be restricted or prohibited as the international treaties or agreements to which the state is a contracting party or a participating party so require.

Article 17 The State may, in the case of the import or export of the goods and technologies relating to fissionable and fissionable materials or the materials from which they are derived as well as the import or export relating to arms, ammunition and implements for war, take any measures as necessary to safeguard the state security. The State may, in the time of war or for the protection of international peace and security, take any measures as necessary in respect of import or export of goods and technologies.

Article 18 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 16 and 17 in this Law, establish, adjust and publish the list of goods and technologies of which the import or export is subject to restrictions or prohibitions. The authority responsible for foreign trade under the State Council independently or in conjunction with other relevant authorities under the State Council may, with the approval from the State Council, decide, on a temporary basis, to impose restrictions or prohibitions on the import or export of goods and technologies not included in the list provided in the above paragraph within the meaning of Article 16 and Article 17 in this Law.

Article 19 Goods subject to import or export restriction shall be subject to quota and/or licensing control; technologies whose import or export is restricted shall be subject to licensing control. Import or export of any goods and technologies subject to quota and/or licensing control will be effected only with the approval of the authorities responsible for foreign trade under the State Council or the joint approval of the foregoing authorities and other relevant authorities under the State Council in compliance with the provisions of the State Council. Certain imported goods may be subject to tariff rate quota control.

Article 20 Quotas and tariff rate quotas of the imported and exported goods shall be distributed on the principles of transparency, equity, impartiality and efficiency by the authority responsible for foreign trade under the State Council or the relevant authorities under the State Council within their respective responsibilities. Specific

measures for the distribution shall be laid down by the State Council.

Article 21 The state shall implement the commodity assessment system in a uniform manner and in accordance with the provisions of relevant laws and administrative regulations carry out certification, inspection or quarantine in respect of imported and exported commodities.

Article 22 The state shall implement origin management in respect of the imported and exported goods. Specific measures therefore shall be laid down by the State Council.

Article 23 Where the import or export of cultural relics, wildlife animals, plants and the products thereof are prohibited or restricted by other laws or administrative regulations, the provisions of relevant laws and regulations shall be observed.

Chapter 4 International Trade in Services

Article 24 In respect of international trade in services, the People's Republic of China shall, in accordance with the commitments made in international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, grant the other contracting parties or participating parties market access and national treatment.

Article 25 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, pursuant to provisions of this Law and other laws and administrative regulations, administer the international trade in services.

Article 26 The State may impose restrictions and prohibitions on the international trade in services for the reasons that:

- (1) restrictions or prohibitions are needed to safeguard the state security, public interests or public morals,
- (2) restrictions or prohibitions are needed to protect the human health or security, the animals and plants life or health or the environment,
- (3) restrictions are needed to establish or accelerate the establishment of a particular domestic service industry,
- (4) restrictions are needed to maintain the balance of international payment of the state,
- (5) restrictions or prohibitions are needed as laws and administrative regulations so provide, or
- (6) restrictions or prohibitions are needed as the international treaties or agreements to which the state is a contracting party or a participating party so require.

Article 27 The State may, in the case of military-related international trade in services,

as well as the international trade in services relating to fissionable and fissionable materials or the materials from which they are derived, take any measures as necessary to safeguard the state security. The state may, in the time of war or for the protection of international peace and security, take any measures as necessary in respect of international trade in services.

Article 28 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 26 and 27 in this Law and other relevant laws and administrative regulations, determine, adjust and publish the market access list of international trade in services.

Chapter 5 Protection of Trade-Related Aspects of Intellectual Property Rights

Article 29 The State shall, in accordance with laws and administrative regulations relevant to intellectual property rights, protect trade-related aspects of intellectual property rights. Where the imported goods infringe intellectual property rights and impair foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the import of the relevant goods from being produced or sold by the infringer within a certain period.

Article 30 Where the intellectual property right owner is involved in any one of such practices as preventing the licensee from challenging the validity of the intellectual property right in the licensing contract, conducting coercive package licensing or incorporating exclusive grantback conditions in the licensing contract, which impairs the fair competition order of foreign trade, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate such impairment.

Article 31 If other countries or regions do not grant the legal persons, other organizations and individual from the People's Republic of China national treatment in respect of the protection of intellectual property rights, or cannot provide adequate and effective protection of intellectual property rights for the goods, technologies or services from the People's Republic of China, the authority responsible for foreign trade under the State Council may, in accordance with the provisions of this Law and other relevant laws and administrative regulations and the international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, take measures as necessary in respect of the trade with the country or region in question.

Chapter 6 Foreign Trade Order

Article 32 In foreign trade dealings, monopolistic behavior in violation of relevant provisions of anti-monopoly laws and administrative regulations is not allowed. In

foreign trade dealings, any monopolistic behavior with the effect of eliminating market fair competition shall be disposed of in accordance with relevant provisions of antimonopoly laws and administrative regulations. Where any activities in violation of laws set forth in the former paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate the impairment.

Article 33 In foreign trade activities, such unfair competition activities as selling the products at unreasonable low prices, colluding with each other in a tender, producing and releasing false advertisements and conducting commercial bribery and others like are not allowed. Any unfair competitive practice conducted in the foreign trade activities shall be disposed of in accordance with relevant laws and administrative regulations against unfair competition. Where any illegal activities as provided in the previous paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the dealer from importing and exporting relevant goods and technologies to eliminate the impairment.

Article 34 The following practices are not allowed in foreign trade activities:

- (1) forgery, distortion of origin marks of the imported and exported goods; forgery, distortion or trading of origin certificates of imported or exported goods, import and export licenses, certificates of import and export quota or any other certificate for import and export;
- (2) defrauding the State of the refunded tax on exports;
- (3) smuggling;
- (4) evading certification, inspection and quarantine inspection as provided by laws and administrative regulations;
- (5) other activities in violation of the provisions of laws and administrative regulations.

Article 35 In foreign trade activities, foreign trade dealers shall act in compliance with relevant provisions of foreign exchange administration of the state.

Article 36 The authority responsible for foreign trade under the State Council may give a notice to the public the activities in violation of this Law for impairing foreign trade order.

Chapter 7 Foreign Trade Investigation

Article 37 In order to maintain the foreign trade order, the authority responsible for foreign trade under the State Council may carry out investigations on the following matters in accordance with laws and administrative regulations at its disposal or in conjunction with other relevant administrations:

- (1) the impact on the domestic industry as well as the competitive strengths of import

and export of goods, import and export of technologies and international trade in services;

(2) trade barriers of relevant countries or regions;

(3) matters needed to be investigated on in order to determine whether such foreign trade remedies as anti-dumping, countervailing or safeguard measures shall be taken;

(4) activities that circumvent foreign trade remedies;

(5) matters in relation to state security in foreign trade;

(6) matters needed to be investigated on in order to enforce the provisions of Articles 7, 29(2),30,31,32(3) and 33(3).

(7) Other matters which may have impact on foreign trade order and need to be investigated on.

Article 38 The authority responsible for foreign trade shall give a notice in case of initiating foreign trade investigations. The investigation may take the form of questionnaires in writing, hearings, on-the-spot investigations, entrusted investigations and otherwise. The authority responsible for foreign trade under the State Council shall, on the basis of the findings, submit investigation reports or make determinations and give public notices.

Article 39 Relevant units and individuals shall provide the foreign trade investigation with cooperation and assistance. The authority in charge of foreign trade and other authorities under the State Council as well as their staff members shall have the obligation to keep the state secrets and business secrets known to them confidential during foreign trade investigations.

Chapter 8 Foreign Trade Remedies

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

Article 41 Where a product from other countries or regions is dumped into the domestic market at a price less than its normal value and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the State may take antidumping measures to eliminate or mitigate such injury, threat of injury or retardation.

Article 42 Where the export of a product from other countries or regions to the market of a third country causes or threatens to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the authority responsible for foreign trade under the State Council may, on the request of the domestic industries, carry out consultations with the government of that third country and require it to take appropriate measures.

Article 43 Where an imported product has directly or indirectly accepts any specific subsidy granted by the exporting country or region and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of related domestic industries, the State may take countervailing measures to eliminate or mitigate such injury or threat of injury or retardation.

Article 44 Where a product is being imported in substantially increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the State may take safeguard measures as necessary to eliminate or mitigate such injury or threat of injury and provide the industry concerned with necessary support.

Article 45 Where the increase of services provided to China by the service suppliers from other countries or regions causes or threatens to cause injury to the domestic industries that provide like or directly competitive services, the State may take remedies as necessary to eliminate or mitigate such injury or threat of injury and provide such industry with necessary support.

Article 46 Where the restriction imposed by a third country on the import of a certain product causes the increase in quantities of such product imported into the domestic market and under such conditions as to cause or threaten to cause injury to the established domestic industry, or materially retards the establishment of related domestic industries, the state may take remedies as necessary to restrict the import of the product concerned.

Article 47 Where any country or region that enters into or participate in the economic and trade treaties or agreements with the People's Republic of China deprives the People's Republic of China of or impairs her interests under such treaties or agreements, or hinders realization of the object of such treaties or agreements, the People's Republic of China has the right to request the relevant country or region to take appropriate remedies and has the right to suspend or terminate its performance of relevant obligations in compliance with relevant treaties and agreements.

Article 48 The authority responsible for foreign trade under the State Council shall carry out bilateral or multilateral foreign trade consultations, negotiations and settle disputes in accordance with this Law and other relevant laws.

Article 49 The authority responsible for foreign trade under the State Council and the other relevant authorities under the State Council shall establish the pre-warning and emergency system for import and export of goods, import and export of technologies and international trade in services so as to cope with the unexpected and unusual situations in foreign trade for the purpose of safeguarding the economic security of the State.

Article 50 The State may take necessary anti-circumvention measures against the activities circumventing the foreign trade remedies provided under this Law.

Chapter 9 Foreign Trade Promotion

Article 51 The State formulates foreign trade expansion strategies, establishes and improves the foreign trade promotion mechanism.

Article 52 The State shall establish and improve financial institutions for foreign trade and establish funds for foreign trade development and risk as the development of foreign trade requires.

Article 53 The State may take such measures as import and export credit, export credit insurance, export tax refund and other foreign trade promotion measures for the purpose of developing foreign trade.

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

Article 55 The State shall take measures to encourage foreign trade dealer to explore international market, and develop foreign trade by adopting various forms such as foreign investment, foreign contract of construction project and foreign labor cooperation.

Article 56 Foreign trade dealers may organize or participate in relevant associations or chambers of commerce for importers and exporters in accordance with the law. Relevant associations or chambers of commerce shall abide by relevant laws and regulations, provide in compliance with their articles of association their members with foreign trade related services in aspects of manufacturing, marketing, information and training, play a positive role in coordination and self-discipline, submit applications for relevant foreign trade remedies, safeguard the interests of their members and the industry, report to the relevant authorities the suggestions of their members with respect to foreign trade promotion, and actively promote foreign trade.

Article 57 The organization for the promotion of international trade in China shall, in accordance with its articles of association, engage in developing foreign trade relations, sponsoring exhibitions, providing information and advisory services and carry out other foreign trade promotion activities.

Article 58 The State shall support and facilitate the foreign trade carried out by small and medium-sized enterprises with small or middle scale. Article 59 The State shall support and promote the development of foreign trade in national autonomous areas and economically under-developed areas.

Chapter 10 Legal Liabilities

Article 60 Anyone who imports or exports the goods subject to the state trading without authorization in violation of Article 11 of this Law may be imposed on a fine of not more than RMB 50,000 Yuan by the authority responsible for foreign trade under the State Council or other authorities under the State Council; if the circumstances are serious, the aforesaid authorities may refuse to accept the application submitted by the trade dealer in violation of laws for carrying out imports or exports of the goods subject to state trading within three years from the date the administrative sanction decision takes effect or may withdraw the granted authorization of import and export of goods subject to state trading.

Article 61 Anyone who imports and exports the goods of which import and export is prohibited, or imports and exports the goods of which import and export is restricted without authorization shall be disposed of and punished by the Customs in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. Anyone who imports and exports the technologies of which import and export is prohibited, or imports and exports the technologies of which import and export is restricted without authorization shall be disposed of and punished in accordance with relevant laws and regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal proceeds and impose a fine from one to five times the amount of the illegal gains. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council and other relevant authorities under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in paragraphs 1 and 2 of this Article, refuse the applications for import and export quotas or licenses submitted by the law-breaker, or prohibit the law-breaker from engaging in the import and export of relevant goods and technologies within a period from one to three years.

Article 62 Anyone who engages in the international trade in services subject to prohibition or engages in international trade in services subject to restriction without authorization shall be disposed of and punished in accordance relevant laws and administrative regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal gains and impose a fine from one to five times the amount of the illegal proceeds. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime,

he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the law-breaker from engaging in relevant international trade in services within a period from one to three years.

Article 63 Anyone who acts in violation of the provision of Article 34 of this Law shall be punished in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the lawbreaker from engaging in relevant foreign trade activities within a period from one to three years.

Article 64 Where a foreign trade dealer is prohibited from engaging in the relevant foreign trade activities in accordance with Articles 61-63, within the period of prohibition the Customs authority shall not grant release to the relevant imported or exported goods of that foreign trade dealer in accordance with the decision made by the authority responsible for foreign trade under the State Council, and the foreign exchange administration or designated foreign exchange banks shall not process the procedures of selling and purchasing foreign exchange.

Article 65 Any staff member serving in the authority responsible for foreign trade in accordance with this Law who neglects his duty, engages in malpractices for personal gains or abuses his power, shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case does not constitute a crime in accordance with the law. Any staff member serving in the authority responsible for foreign trade in accordance with this Law, who extorts property from others with job convenience or illegally accepts others' property and seeks advantages for them in return shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case does not constitute a crime in accordance with the law.

Article 66 The parties in the foreign trade activities may apply for an administrative reconsideration or bring an administrative lawsuit before a people's court in case of dissatisfaction with a specific administrative act by the authority responsible for foreign trade administration in accordance with this Law.

Chapter 11 Supplementary Provisions

Article 67 Where other laws or administrative regulations provide otherwise in respect of foreign trade administration of military supplies, fissionable and fissionable

materials or the materials from which they are derived and import and export administration of cultural products, the provisions thereof shall be observed.

Article 68 The State applies flexible measures, provides preferential conditions and conveniences to the trade between the towns on the frontier and those towns of neighboring countries on frontier as well as trade among border residents. Specific measures therefore shall be laid down by the State Council.

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

Article 70 This Law shall come into force as of July 1, 2004.