

L A W O F U K R A I N E

No. 360-V of 16 November 2006

On Amendments to the Law of Ukraine "On Foreign Economic Activities"

The Supreme Rada of Ukraine hereby r e s o l v e s:

1. To amend the Law of Ukraine "On Foreign Economic Activities" (Vidomosti Verkhovnoji Rady Ukrainy, 1991, No. 29, page 377; 1993, No. 17, page 184; 1995, No. 13, page 85, No. 14, page 93; 1999, No. 7, page 49; 2004, No. 14, page 197; 2005, No. 3, page 78), having made the following changes:

1) To delete paragraphs 25, 26, 28 and 29 in Article 1.

2) To supplement Article 7 with the following parts:

“The following regimes of treatment of goods that are imported from Members of the World Trade Organizations (hereinafter referred to as the “WTO”) shall be introduced in Ukraine pursuant to this Law:

National Treatment, which means that imported products originating in the WTO Members shall be treated not less favorably than the like products of Ukrainian origin in respect of taxes and charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions;

Most-Favored-Nation Treatment, which relates to customs duties and charges, the method of levying such duties and charges, and all rules and formalities in connection with importation, and means that any advantage, favor, privilege or immunity to any product originating in any country shall be accorded immediately and unconditionally to the like product originating in the territories of the WTO Members or countries, with which bilateral or regional agreements on Most Favored Nation Treatment are concluded.

Exceptions from Most-Favored-Nation Treatment in the form of preferences may be made with respect to products originating in the countries, with which Ukraine has entered into agreements on free trade zones or customs unions or into intermediary agreements, which will lead in the future to the establishment of free trade zones or customs unions within a reasonable period of time (10 years), or into cross-border agreements and agreements for application of the general system of preferences”;

3) To delete the words “subject to licensing or” in paragraph 8 in Part 1 of Article 9.

4) To restate Articles 16 and 17 as follows:

“Article 16. Licensing of Foreign Economic Operations

Licensing of foreign economic operations is defined as a set of administrative actions by the agency of executive power on economic policy affairs that are concerned with a grant of permission to a subject of foreign economic activities to export (import) goods.

Exports (imports) of goods shall be licensed in the form of automatic or non-automatic licensing.

Automatic licensing is defined as a set of administrative actions by the agency of executive power on economic policy affairs that are concerned with a grant of permission to a subject of foreign economic activities to export (import) goods for a specified period of time, with respect to which goods no quotas (qualitative or other restrictions) have been prescribed. Automatic licensing of exports (imports) as an administrative procedure for completion and issuance of licenses shall not have a restricting impact on goods whose exportation (importation) is subject to licensing.

Automatic licensing of imports must be cancelled in the event that circumstances, which were a ground for introducing such automatic licensing, have ceased to exist as well as in the event that there exist other procedures, whereby tasks, for which automatic licensing has been introduced, can be accomplished.

Non-automatic licensing is defined as a set of administrative actions by the agency of executive power on economic policy affairs that are concerned with a grant of permission to a subject of foreign economic activities to export (import) goods for a specified period of time, with respect to which goods there have been prescribed quotas (qualitative or other restrictions). Non-automatic licensing of exports (imports) as an administrative procedure for completion and issuance of licenses shall be used in the event that quotas (quantitative or other restrictions) on exportation (importation) of goods have been prescribed.

Quantitative restrictions shall be used exclusively on a non-discrimination basis, i.e., no prohibitions or restrictions shall be applied by Ukraine in respect of importation of any goods into the territory of Ukraine or in respect of exportation of any goods designated for the territory of any country, unless imports of similar goods from all third countries into Ukraine or exports into all third countries are similarly prohibited or restricted, unless otherwise contemplated by international agreements and laws of Ukraine.

Licensing of exports of goods shall be introduced in Ukraine in the event of:

considerable disturbance of the equilibrium with respect to certain goods on the domestic market, which goods are of considerable importance for life in Ukraine, especially as regards agricultural products, fish products, food industry products and essential and broadly used consumer goods or other goods. Such licensing shall be of a temporary nature and shall apply until the moment the equilibrium with respect to certain goods on the domestic market has been restored;

a need to ensure protections for human, animal or plant life and health, the environment, public morals, national artistic, historical or archeological riches or protection of intellectual property rights, as well as pursuant to national security requirements;

export of gold and silver, except for bank metals;

a need to apply measures aimed to protect domestic producers in the event of restrictions on exports of domestic materials, which are necessary for securing a sufficient quantity of such materials for the domestic processing sector during periods when internal prices for such materials keep at the level lower than global prices, provided that a stabilization plan has been introduced by the Cabinet of Ministers of Ukraine, and further provided that such restrictions must not result in the growth of exports of goods by such sector of national industry. Such measures shall apply exclusively on a non-discrimination basis;

a need to ensure protections for patents, trademarks and copyright;

a need to ensure that international agreements and treaties of Ukraine are performed.

Licensing of imports of goods shall be introduced in Ukraine in the event of:

abrupt deterioration of the balance of payments and external payments (if other measures are not effective);

an abrupt decrease in or a minimum amount of gold and currency reserves;

a need to ensure protections for human, animal or plant life and health, the environment, public morals, national artistic, historical or archeological riches or protection of intellectual property rights, as well as pursuant to national security requirements;

import of gold and silver, except for bank metals;

a need to apply measures aimed to protect domestic producers in the event of growth of imports into Ukraine, which cause or threaten to cause considerable harm to domestic producers of similar or directly competing goods. Such licensing shall be of a temporary nature and shall apply for such a time period as permits to prevent the causing of considerable harm or to compensate the harm caused to domestic producers and enables such domestic producers to restore their profitability;

a need to ensure protections for patents, trademarks and copyright;

a need to ensure that international agreements and treaties of Ukraine are performed.

Decisions to introduce a regime of licensing of exports (imports), including the introduction of quotas (quantitative or other restrictions), shall be adopted by the Cabinet of Ministers of Ukraine upon submission by the central agency of executive power on economic policy affairs with indication of a list of specific goods, whose exportation (importation) is subject to licensing, and the time period during which such licensing and quantitative or other restrictions will be in effect with respect to each of the goods.

In the event that protective measures aimed to protect domestic producers are applied, a decision to introduce a regime of licensing shall be adopted by the Inter-Agency Commission on Foreign Trade pursuant to law.

Only one type of license may be introduced for each type of goods.

Licenses shall be issued by the central

agency for each Oblast, Kyiv, Sevastopol, Crimea and the Autonomous Republic of Transcarpathia.

Licenses shall be issued on the basis of applications filed by subjects of foreign

a decision to issue a license shall be adopted taking account of information on the usage of the earlier obtained licenses, provided that subjects of foreign economic activities have complied with the requirements of law on protection of economic competition.

If filed applications are reviewed simultaneously, in the event that non-automatic licensing has been introduced for the first time, the quotas shall be allocated in proportion to quantities that are indicated in the applications of subjects of foreign economic activities.

Non-automatic licensing must have no restrictive or trade-distorting impact upon goods in addition to the impact that results from the introduction of the regime of non-automatic licensing.

A license shall be issued in the event that an application therefor and other submitted documents have been completed in accordance with the requirements as are prescribed by law. The term of the license shall provide for the licensee's performance of obligations under a foreign economic agreement (contract), but shall not exceed the time period, during which quantitative restrictions are in effect.

A decision, whereby issuing a license is refused, must be motivated, adopted within a time period prescribed for review of applications, and sent (provided) to an applicant in writing.

In the event that a license is denied, the applicant shall be entitled to challenge the decision pursuant to law.

The list of goods, whose exportation (importation) is subject to licensing, information on the term of licenses and introduction of any changes thereto, procedures governing filings and review of applications shall be published in official Ukrainian gazettes, with a notification to

It shall be prohibited in Ukraine to:

- export from the territory of Ukraine such items as constitute the national, historical, archeological or cultural heritage of the Ukrainian people as defined by the laws of Ukraine;
- import or transit any goods, regarding which it is in advance known that they may cause harm to public morals, health or endanger public, animal and plant life, or result in destruction of the environment, unless the necessary measures are taken to prevent such harm in respect of goods in transit;
- import products and services that contain the propaganda of ideals of war, racism and racial discrimination, genocide, etc., which are inconsistent with applicable norms of the Constitution of Ukraine;
- export exhaustible natural resources if such restrictions also apply to domestic consumption or production;
- export and import goods in violation of intellectual property rights;
- export from the territory of Ukraine such goods within the framework of implementation of resolutions of the United Nations Security Council on the application of restrictions or embargos on supplies of goods to a certain country.

It shall be possible to introduce bans on exports or imports on other grounds only if it is permitted by international treaties and agreements, to which Ukraine is a party.

The list of goods whose exportation (importation) through the territory of Ukraine is banned shall be determined exclusively by laws of Ukraine.

Customs authorities of Ukraine and the central agency of executive power on economic policy affairs shall be charged with control over the fulfillment of the requirements of this Article”.

5) To restate Article 29 as follows:

“Article 29. Measures of Ukraine in Response to Actions of Discrimination and/or Unfriendly Actions of other Countries, Customs Unions or Economic Groups

If there is information to the effect that other countries, customs unions or economic groups restrict the exercise of legitimate rights and interests of Ukrainian subjects of foreign economic activities, adequate measures may be taken in response to such actions. In the event that such actions cause or threaten to cause harm to the State and/or to subjects of foreign economic activities, the said measures may provide for recovery of losses.

Measures in response to actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups shall be undertaken in accordance with the laws of Ukraine, international treaties and agreements of Ukraine, generally accepted norms, standards and rules of international law.

Such measures are as follows:

- application of a full ban (full embargo) on trade;
- application of a partial ban (partial embargo) on trade;
- removal of Most-Favored-Nation Treatment or special beneficial treatment;
- introduction of a special duty;
- introduction of a regime of licensing of or/or quotas for foreign economic operations;
- prescription of quotas;

unfriendly actions of other countries, customs unions or economic groups shall be binding on agencies of executive power in Ukraine, subjects of foreign economic activities and foreign business entities.

A decision to apply appropriate measures in response to actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups may be challenged in court within one month from the date of the introduction of such measures pursuant to the procedures laid down by the laws of Ukraine.”

2. This Law shall enter into force as from the date of promulgation hereof.