

November 26, 2012
Preliminary Draft

ISLAMIC REPUBLIC OF AFGHANISTAN

DRAFT LAW ON FOREIGN TRADE IN GOODS

Table of contents

<u>Title</u>	<u>page</u>
Article 1: Legal Basis	3
Article 2 : Objectives.....	3
Article 3: Scope.....	3
Article 4: Definitions.....	3
Article 5: General Principles.....	4
Article 6: Right to Trade.....	5
Article 7: Most-Favored-Nation.....	5
Article 8: National Treatment.....	6
Article 9: Application of Trade Measures.....	6
Article 10: Import and Export Licensing Rules and Procedures.....	7
Article 11: Trade-Related Fees.....	7
Article 12: Transparency.....	8
Article 13: Right of Appeal	8
Article 14: Dispute Resolution	9
Article 15: Protection of Confidential Information	9
Article 16 : Treatment.....	10
Article 17: Trade Measures Regulated under other Laws.....	10
Article 18: Implementing Regulations, Procedures and Rules	11
Article 19 : Entry into Force and Transitional Arrangements.....	11

DRAFT LAW ON FOREIGN TRADE IN GOODS

Legal Basis

Article 1

The Law on Foreign Trade in Goods (hereinafter “this Law”) is enacted pursuant to Article 11 of the Constitution of the Islamic Republic of Afghanistan (hereinafter “Afghanistan”).

Objectives

Article 2

The objectives of this Law are:

- a. to regulate the basic rules for trade and commercial activities between Afghanistan and foreign countries and territories;
- b. to determine authorities of Afghan government agencies with respect to foreign trade activities;
- c. to establish rights and obligations of legal and natural persons engaged in foreign trade activities; and
- d. to provide a favorable trade environment and to facilitate trade.

Scope

Article 3

The provisions of this Law shall apply to all natural and legal persons engaged in foreign trade activity within the territory of Afghanistan.

Definitions

Article 4

4.1 *Goods* shall mean any movable tangible articles or assets, but not securities, commercial papers or cash.

4.2 *Foreign trade activity* shall mean any commercial and other economic activities involving the movement of goods between the Islamic Republic of Afghanistan and foreign countries and territories.

4.3 *Competent Authority* shall mean the state entity authorized to regulate a foreign trade activity covered by this Law.

4.4 *Trade measures* shall mean import and export duties, anti-dumping duties, countervailing duties, prohibitions, licenses, quotas, tariff quotas, taxes, fees, technical regulations (mandatory conformity certificates), veterinary certificates, phytosanitary certificates and sanitary-epidemiological certificates.

- 4.5 *Import licensing* shall mean administrative procedures requiring the submission of an application and/or other documentation to the Competent Authority as a prior condition for importation of goods.
- 4.6 *Export licensing* shall mean administrative procedures requiring the submission of an application and/or other documentation to the Competent Authority as a prior condition for exportation of goods.
- 4.7 *Automatic licensing* shall mean licensing to collect statistical and other factual information on imports or exports and where the approval for the application of a license is granted in all cases.
- 4.8 *Non-automatic licensing* shall mean licensing not falling within the definition of automatic licensing; i.e. the granting of which is made subject to fulfilling specified criteria or requirements.
- 4.9 *Tariff quota* shall mean a quantitative threshold on imports or exports of particular goods above which a higher tariff is applied.
- 4.10 *Quota* shall mean a limitation on the quantity of particular goods that may be imported or exported in a designated time-frame.
- 4.11 *Most-Favored-Nation* shall mean the best treatment provided by Afghanistan to particular goods originating from any country.
- 4.12 *National Treatment* shall mean treating imported goods no less favorably than domestic goods.
- 4.13 *Ad valorem fees* shall mean fees which vary based on the value of the products, services, or property on which it is levied.

General Principles

Article 5

- 5.1 Foreign trade activities shall not be restricted except as otherwise provided by this Law.
- 5.2 Any legal act of an administrative authority (at central or regional level) creating restrictions on foreign trade contrary to the provisions of this Law shall be considered null and void.
- 5.3 Formalities conducted in accordance with the provisions of this Law shall not be administered in such a manner as to have a restrictive effect on foreign trade, or to provide disguised protection to domestic products.
- 5.4 The type and scope of any trade measures adopted or maintained shall be limited to the minimum required for the achievement of the objective pursued. In particular, no trade

measure shall be adopted or maintained if an alternative and less trade-restrictive measure could be substituted and such measure would provide an equivalent contribution to the achievement of the objective pursued. In addition, the scope of any trade measure must be reduced whenever and insofar as a change in circumstances surrounding its application permits such reduction.

5.5 A trade measure must be abolished whenever the reasons justifying its existence cease to exist.

Right to Trade

Article 6

6.1 The right to engage in foreign trade activities for commercial purposes shall be granted to any natural person, foreign or domestic, having a Tax Identification Number (TIN), and any Afghan legal person (whether or not foreign-invested) who has obtained an Incorporation Certificate in accordance with the Companies Law.

6.2 Representative offices of foreign companies and non-governmental organizations are not authorized to engage in foreign trade activities for commercial purposes. They shall however be permitted to engage in trading for own operations without need for a TIN or registration as a legal entity.

6.3 There shall be no requirement to invest in order to engage in foreign trade activities.

Most-Favored-Nation

Article 7

7.1 Imported and exported goods shall be accorded the Most-Favored-Nation (MFN) treatment as required by international agreements binding on the Government of Afghanistan, and otherwise as decided by the Council of Ministers.

7.2 MFN shall be observed with respect to customs duties and charges of any kind imposed on or in connection with importation and exportation and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation.

7.3 Exceptions to MFN, in the form of additional preferences, may be granted to goods originating from countries with which Afghanistan has a free trade area or customs union or an interim agreement leading to the formation of a free trade area or customs union.

National Treatment

Article 8

- 8.1 Imports shall be accorded national treatment as required by international agreements binding on the Government of Afghanistan, and as otherwise decided by the Council of Ministers.
- 8.2 National treatment shall apply with regard to internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of imported goods, and internal quantitative regulations requiring the mixture, processing or use of goods in specified amounts or proportions.

Application of Trade Measures

Article 9

- 9.1 No other trade measures may be imposed in addition to those defined under Article 4(4) and those adopted to fulfill commitments of bilateral, regional and international trade agreements.
- 9.2 Trade Measures concerning products shall be adopted through the Council of Ministers.
- 9.3 Import quotas, prohibitions, or non-automatic licenses may only be imposed for the following reasons:
- a. to protect public order or morals;
 - b. to protect human, animal or plant life or health;
 - c. to protect national security;
 - d. to protect the environment;
 - e. to protect intellectual, industrial, or commercial property;
 - f. to enforce any special rules for trade in gold or silver; and
 - g. to regulate imports of dual use technology in accordance with specific legislation on export controls.
- 9.4 Export quotas, prohibitions, or non-automatic licenses may only be imposed for the following reasons:
- a. to protect national treasures of artistic, cultural, historic or archaeological value;
 - b. to protect endangered species or plants;
 - c. to protect national security;
 - d. to enforce any special rules for trade in gold and silver;
 - e. to protect exhaustible natural resources but only if export restrictions are applied simultaneously with restrictions on domestic production or consumption;
 - f. to ensure essential quantities of domestic materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of the governmental stabilization plan;

- g. to temporarily prevent or relieve critical shortages of foodstuffs or other products essential to Afghanistan;
- h. necessary to the application of standards or regulations for the classification, grading or marketing of commodities; and
- i. to regulate import of dual use technology in accordance with specific legislation on export control.

9.5 Automatic import licenses shall be granted in all cases and shall be governed by the provisions of Article 10 of this Law.

9.6 Non-Automatic licenses shall be granted upon consideration of the Competent Authority and shall be governed by the provisions of Article 10 of this Law.

9.7 Non-automatic licenses and quotas may also be imposed in the context of temporary measures to safeguard domestic production or for balance-of-payment purposes and in accordance with specific legislation on these subjects.

9.8 Tariff-rate quotas shall be applied in accordance with international agreements and commitments. Special procedures shall be developed for administering tariff-rate quotas by the Competent Authority.

Import and Export Licensing Rules and Procedures

Article 10

The Competent Authority shall develop rules and procedures on automatic and non-automatic licensing with respect to imports or exports. Such rules and procedures shall be in accordance with Afghanistan's international agreements and with the governing principles established in this Law.

Trade-Related Fees

Article 11

11.1 No fees (other than duties and taxes) may be imposed on foreign trade activities except for services rendered. In such cases, fees shall reflect the approximate cost of services rendered and shall not be *ad valorem*.

11.2 Fees imposed for services rendered shall not be collected for the purpose of fiscal revenue but rather to cover operational and modernization costs of the state body rendering the service.

11.3 All fees related to trade shall be approved in advance by the Council of Ministers.

Transparency

Article 12

- 12.1 Except in emergency cases, all adopted trade measures shall be published in the Official Gazette or prominent national newspaper at least 25 working days prior to coming into force or a longer period if required by international agreements. In emergency cases, trade measures shall be published in the Official Gazette or national newspaper within 10 working days of coming into force.
- 12.2 Except in emergency cases, all initial draft laws, regulations and other legally binding acts of Afghanistan related to foreign trade in goods and proposed trade measures shall be published by ministries and state agencies for consultation and public comments prior to finalization. The publication of drafts may be posted through the ministry or state agency website or journal and/or national publication (nationwide newspaper) and shall include a reasonable period for commenting (not less than 25 working days). It shall indicate the means through which comments may be submitted to the relevant ministry or state agency. Upon request from relevant interested parties, ministries and state agencies shall convene working groups to discuss received comments, including representatives of stakeholders who submitted comments. If required by international agreements, trading partners shall be notified of the proposed measures and allowed to comment on the proposed measures in accordance with relevant laws on specific subjects. Any such comments shall be taken into account when finalizing the trade measures.
- 12.3 All laws and legal acts connected with foreign trade measures and trade agreements shall refer to goods precisely as specified in the national tariff nomenclature (Harmonized System HS Code and description) using the appropriate 2 digits, 4 digits, 6 digits, or 8 digits classification level.
- 12.4 The Council of Ministers shall at the beginning of the fiscal year, or during the fiscal year as needed, issue a resolution updating and making public a list of imports and exports subject to trade measures under this law. The list shall contain information on goods (using HS Code and description) the import or export of which are subject to any trade measures under this Law, duration of the measure, administering entity and any other useful references.

Right of Appeal

Article 13

- 13.1 Traders shall have the right to seek administrative appeal to the body administering or issuing a trade measure and/or direct access to the Commercial Court or relevant tribunal in cases involving the violation of rights and obligations by state bodies with respect to the issuance and application of trade measures and related procedures.
- 13.2 The Competent Authority shall develop transparent and adequate procedures that provide prompt resolution (within 21 working days) through administrative appeals.

13.3 There shall be a right of judicial review by the Commercial Court or relevant tribunal against decisions adopted in administrative appeal procedures.

Dispute Resolution

Article 14

14.1 Foreign and domestic participants in foreign trade may agree on the applicable law to their transactions and choice of competent court or arbitral tribunal.

14.2 Where the applicable law or the forum for dispute resolution was not agreed upon by the parties, it shall be determined in accordance with the general principles of private international law.

14.3 In the case referred to in paragraph 2 of this Article, where a dispute arises in which one party to the dispute is the Government or a state authority, a party that is a foreign person may submit such dispute for settlement before the International Center for the Settlement of Investment Disputes (ICSID), subject to and in accordance with its rules.

14.4 Domestic and foreign arbitrations may apply the Additional Facility Rules of the ICSID Convention applicable when one of the parties to the dispute is either not a contracting member state or a national of a contracting member state.

Protection of Confidential Information

Article 15

15.1 Any information which is by nature confidential, or which is provided on a confidential basis by parties to any procedure administered under this Law shall be treated as such. If the confidentiality of the information is in dispute, the party claiming confidentiality shall, upon request, show good cause as to why the information is confidential.

15.2 Information which is confidential for the purposes of paragraph 1 of this Article shall include information whose disclosure would provide a significant competitive advantage to a competitor or would have a significant adverse effect upon a party supplying the information or upon a party from whom the information has been acquired.

15.3 The authority administering the proceedings or its officials shall not reveal any information received pursuant to this Law and any implementing regulation thereof for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

15.4 Authorities have the right not to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Treatment
Article 16

All Afghan legal persons with or without foreign ownership interest, branches of foreign companies, Afghan natural persons, foreign natural persons, and establishments under the public law shall be subject to the same trade measures, covered by this Law and defined in Article 4(4), including trade-related administrative procedures.

Trade Measures Regulated under other Laws
Article 17

- 17.1 Transit trade shall be regulated in accordance with Afghanistan's international agreements and obligations and through appropriate customs-related legislation.
- 17.2 Anti-dumping duties shall be imposed on trade in goods in accordance with specific legislation on the subject and in line with Afghanistan's international commitments.
- 17.3 Countervailing duties shall be imposed on trade in goods in accordance with specific legislation on the subject and in line with Afghanistan's international commitments.
- 17.4 Safeguard measures (in the form of increase in duties, licenses or quotas) shall be imposed on trade in goods in accordance with specific legislation on the subject and in line with Afghanistan's international commitments.
- 17.5 Import and export duties shall be imposed on trade in goods in accordance with the procedures laid out in Afghanistan's customs law and in line with Afghanistan's international commitments.
- 17.6 Sanitary, Veterinary, and phytosanitary certificates shall be required on trade in goods in accordance with specific respective legislation on these subjects and in line with Afghanistan's international commitments.
- 17.7 Technical regulations (mandatory conformity certificates) shall be imposed on trade in goods in accordance with specific legislation on the subject and in line with Afghanistan's international commitments.
- 17.8 Taxes on imports and exports shall be applied on trade in goods in accordance with tax legislation and in line with Afghanistan's international commitments.
- 17.9 All aforementioned specific laws shall be consistent with the provisions of this Law. In case of conflict, the provisions of this Law shall prevail.

Implementing Regulations, Procedures and Rules

Article 18

The Competent Authority shall as necessary issue regulations, procedures and rules for the implementation of this Law.

Entry into Force and Transitional Arrangements

Article 19

- 19.1 This Law shall be referred to as “The Law on Foreign Trade in Goods” and shall come into force six months after its publication in the Official Gazette.
- 19.2 In case of contradiction, this Law shall prevail over the provisions, or where required, complete texts of existing laws, decrees, regulations, official letters or any other binding acts, including any amendments or annexes thereto.
- 19.3 All current trade measures (other than those issued in accordance with Article 17 of this Law) shall be considered null and void from the date of entry into force of this Law. Proposals for instituting new trade measures and procedures for their implementation, in accordance with this Law, shall be submitted to the Council of Ministers promptly after the publication of this Law in the Official Gazette and no later than 3 months from the date of publication.
- 19.4 After the entry into force of this Law, the General Directorate of Customs, all border control authorities and other relevant authorities shall only enforce trade measures complying with this Law, in addition to those issued in accordance with other legislation as provided in Article 17.