

# LAW ON REGULATION OF FOREIGN TRADE ACTIVITY

## I.GENERAL PROVISIONS

This Law shall determine fundamentals of foreign trade activity in the Republic of Tajikistan, basic principles of state regulation of foreign trade activity, fundamental rights and obligations of natural and legal persons and state authorities in the area of foreign trade activity.

### **Article 1. Legislation of the Republic of Tajikistan on Foreign Trade Activity**

The legislation of the Republic of Tajikistan on foreign trade activity shall be based on the Constitution of the Republic of Tajikistan and shall comprise this Law, other normative legal acts of the Republic of Tajikistan and also international legal acts recognized by the Republic of Tajikistan.

### **Article 2. Definitions**

When used in this Law, the following terms shall have the following meaning:

- 1) *Foreign Trade Activity* shall mean any trade, economic activity, commerce, contracts, transactions and any other activities involving the movement of goods, other tangible property, intangible assets, property rights, or services between the Republic of Tajikistan and countries or territories outside the Republic of Tajikistan.
- 2) *National Treatment*:
  - With respect to goods, shall mean that imported goods shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products; shall be accorded treatment no less favorable than that accorded to like products of domestic origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use, and that no such taxes, internal charges, laws, regulations or requirements shall be applied so as to afford protection to domestic production;
  - With respect to services, in sectors where the Republic of Tajikistan committed to apply such a principle in accordance with international agreements, shall mean that services and service providers originating from any foreign country or territory, with respect to all measures affecting the supply of services, shall receive treatment no less favorable than that accorded to domestic like services and service suppliers.

3) *Most-Favored-Nation Treatment*

- With respect to goods, shall mean the treatment, with respect to imports from or exports to a foreign country or territory in accordance with international obligations, with respect to customs duties and charges of any kind imposed in connection with importation or exportation or on the international transfer of payments for imports or exports, and with respect to the manner of application of such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to internal taxes and charges of any kind, and with respect to all requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use, is no less favorable than similar treatment accorded to like product when imported from or exported to any other foreign country or territory;

- With respect to services, in sectors where the Republic of Tajikistan committed to apply such a principle in accordance with international agreements, shall mean treatment to services and service suppliers of any country or territory that is no less favorable than that accorded to like services and service suppliers of any other country.

4) *Person* shall mean any natural or legal person recognized by the legislation of the Republic of Tajikistan, including foreign natural or legal person.

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

6) *Export* shall mean the transport or delivery of goods from the territory of the Republic of Tajikistan to a foreign country or territory in accordance with the customs legislation of the Republic of Tajikistan.

7) *Import* shall mean the transportation or delivery of goods or services from any foreign country or territory into the territory of the Republic of Tajikistan in accordance with the customs legislation the Republic of Tajikistan.

8) *Transit* shall mean transportation of goods through the territory of Republic of Tajikistan, where such transportation is just a part of the complete itinerary that begins and ends outside of its territory, without such goods entering the regular commerce of Tajikistan.

9) *Restrictive Measure* shall mean any prohibition, quantitative restriction, special charge (other than a tariff, internal tax, or charge for a service actually rendered), condition, license, approval or any other measure imposed by any state authority having a restrictive effect on foreign trade activity, but shall not include technical regulations.

10) *Quantitative Restriction* shall mean the highest total value or maximum quantity of certain goods that may be exported or imported within the prescribed period of time, including the ban on export or import.

11) *Quota* shall mean a share in the total value or quantity of exports or imports allocated to certain person or group of persons (exporters or importers).

12) *License* shall mean a document granted by a state authority in the administrative procedure, upon an application of an interested person, which is a prior condition for importation or exportation.

13) *Automatic License* shall mean import or export license required for administrative or statistical purposes only, which shall be issued by the state authority in all cases, without exceptions.

14) *State Authority* shall mean any executive authority, public institution, ministry, agency, or any other authority that exercises legislative, executive or judicial powers.

### **Article 3. General Principles**

1. Foreign trade activity shall be free and unrestricted except as otherwise provided by this Law.

2. All persons may conduct foreign trade activities in accordance with their legal and commercial capacities, in accordance with this Law and the legislation of the Republic of Tajikistan regulating commercial activities.

3. Any legal act issued by a state authority, except the Government of the Republic of Tajikistan (hereinafter referred to as: the Government), creating restrictions on foreign trade contrary to the provisions of this Law shall be null and void.

4. 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.

### **Article 4. Right to Establish Restrictive Measures**

The Government shall be the only state authority competent to establish a restrictive measure provided for by this Law.

### **Article 5. Criteria to Establish Restrictive Measures**

1. The Government may establish a restrictive measure only:

1) Where specifically authorized by this Law;

2) Where such restrictive measure is necessary to achieve a purpose specified by this Law; and

3) Where the type and scope of such restrictive measures are limited to the minimum necessary to achieve such purpose.

2. A restrictive measure must be abolished, or the applicable scope thereof reduced, as and insofar as the reasons justifying its existence cease to exist or upon a change of the conditions of its application.

### **Article 6. Transparency**

1. Unless otherwise specifically provided for in this Law, no restrictive measure may take effect until at least 30 days have elapsed since its official publication.

2. The Government shall establish, maintain and make public the Export and Import Control List containing information on goods whose import and export are subject to any restrictions under this Law.

3. Upon the written application of any interested person the state authority responsible for foreign trade activity (hereinafter referred to as: the competent authority) shall provide information regarding the implementation of this Law.

### **Article 7. Right of Appeal**

1. The law that governs general administrative procedure shall be applicable to all procedures conducted in accordance with this Law.

2. Administrative decisions issued in accordance with this Law shall be appealable in accordance with the legislation of the Republic of Tajikistan.

### **Article 8. Confidential Information**

1. Any information which is by its nature confidential, or which is provided on a confidential basis by parties to any procedure administered under this Law shall be treated as such.

2. Information which is by nature confidential shall include information whose disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a party supplying the information or upon a party from whom the information has been acquired.

3. The competent authority or any other state authority administering the proceedings related to foreign trade activity or its officials shall not reveal any information received pursuant to this Law for which confidential treatment has been requested by its supplier, without specific permission from the supplier (holder) of such information.

### **Article 9. Fees for Services**

1. No fees may be imposed in connection with imports or exports except those that are clearly related to services actually rendered by the administrative authority. Any fees collected by the competent authority or any other state authority in connection with foreign trade activity shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a means of obtaining revenue for fiscal purposes.

2. The Government shall issue a schedule of fees for services that are routinely and regularly provided in connection with foreign trade activity.

3. The funds collected pursuant to paragraph 1 of this Article shall be revenue of the state budget.

### **Article 10. Dispute Resolution**

1. Participants in foreign trade activity may agree on the applicable law to their transactions and the choice of competent court or arbitral tribunal.

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

## **II. FOREIGN TRADE IN GOODS**

### **CHAPTER I**

#### **IMPORT AND EXPORT**

##### **Article 11. Right to Import and Export Goods**

1. Subject to their status under relevant legislation and to the provisions of this Law and other legislation enacted pursuant to this Law, any person may import or export goods, including but not limited to:

- 1) Goods intended for sale, inward or outward processing, or any other commercial transaction, subject to legislation that regulates commercial activities;
- 2) Goods intended for own use of legal entities, personal or family use; and
- 3) Goods necessary to perform professional activities, including entrepreneurs, farmers and natural persons conducting professional activities or providing services.

2. Foreign persons who are not commercially present (who do not have representative or branch office or any other type of business or professional form of organization) established in the Republic of Tajikistan shall have the right to import goods into the territory of the Republic of Tajikistan, directly and without the need to use the services of the customs broker or any other local natural or legal person at any stage of the import procedure. However, such importers shall not have the right to sell and distribute such imported goods in the Territory of the Republic of Tajikistan. Importers who are not commercially present in the territory of the Republic of Tajikistan shall have the right to deliver imported goods only to natural and legal persons having the right to distribute such goods the territory of the Republic of Tajikistan.

##### **Article 12. National Treatment**

1. Foreign persons conducting import or export of goods in accordance with the provisions of this Law shall be accorded treatment equal to that accorded to national persons.

2. Imported goods shall be entitled to national treatment.

3. National treatment shall be implemented in accordance with the international agreements recognized by the Republic of Tajikistan, and otherwise and otherwise as the Government may decide.

##### **Article 13. Most Favored Nation Treatment**

1. Imported goods shall be accorded most-favored nation treatment as required by international agreements recognized by the Republic of Tajikistan and otherwise as the Government may decide.

2. Most-favored nation treatment need not reflect advantages accorded to an adjacent country or territory in order to facilitate frontier traffic, nor advantages granted pursuant to a bilateral or multilateral free trade area or customs union agreement, or pursuant to an interim agreement intended to advance the formation of a free trade area or a customs union.

#### **Article 14. Prohibited Imports**

1. Goods shall not be imported into the Republic of Tajikistan or transited through its territory if trade in such goods is prohibited in the Republic of Tajikistan under the legislation of the Republic of Tajikistan.

2. The Government may prohibit imports, temporary imports or transit of goods if circulation of such goods is banned under the legislation of the country of export, of origin, or of destination of such goods.

### **CHAPTER II**

#### **QUANTITATIVE RESTRICTIONS AND LICENSING**

##### **§1. QUANTITATIVE RESTRICTIONS**

#### **Article 15. Conditions**

1. The Government may impose quantitative restrictions on exports only:

1) In case of critical shortages of products essential to the Republic of Tajikistan, or for the relief of consequences of such shortages; or

2) In order to protect exhaustible natural resources, if export restrictions are applied simultaneously with restrictions on domestic production or consumption.

2. The Government may impose quantitative restrictions on imports as a safeguard measure pursuant Articles 45-51 of this Law.

#### **Article 16. Notice of Quantity**

The competent authority shall give public notice of the total quantity or value of goods permitted to be imported or exported pursuant this Law during a specified period of time, and of any change in such quantity or value.

#### **Article 17. Allocation of Quotas**

1. The competent authority shall allocate any quotas on the basis of a public invitation to submit requests for allocation of quotas.

2. Public invitation has to be published at least 8 days before the allocation of quotas.

3. The competent authority shall allocate quotas on the basis of objective and rational criteria and conditions, defined in the notice of public bid, which shall not have a protective purpose or competition distorting effect, including *inter alia* the following:

1) Economically justified quantities of goods under quota;

2) Performance of the applicant in utilizing previously allocated quotas;

3) Allocation of quotas to persons previously not having been allocated quotas.

2. Decisions on quota allocation shall specify conditions to be fulfilled by the persons receiving quotas, including the time, not exceeding one year, during which the quota must be used.

3. The competent authority may revoke a decision on quota allocation and allocate the quota to another person, if the person being allocated a quota does not use the quota in accordance with the public bid referred to in paragraph 1 of this Article.

4. The number of shipments during the period of validity of the quota shall not be limited.

5. The importer shall be free to choose the supplying country and the exporter shall be free to choose the destination country.

### **Article 18. Quotas Not Transferable**

A person who has been allocated a quota may not transfer such quota to another person, nor allow its use by other Person.

## **§2. LICENSES**

### **Article 19. General Rule**

1. The Government may, in accordance with the provisions of this Law, require licenses for the import, export, or transit of certain goods, which shall be based on objective and rational criteria, conditions and procedures.

2. The Government may prescribe licenses for administrative or statistical purposes (hereinafter referred to as: automatic license) making sure that such a license does not restrict foreign trade. The system of automatic licenses shall remain in effect for as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

### **Article 20. Allowable Criteria for Import and Transit Licenses**

The Government shall have the right to introduce import or transit licenses only when it is necessary to:

- 1) Protect human, animal or plant life or health;
- 2) Protect national security;
- 3) Protect environment or exhaustible natural resources;
- 4) Protect public morals;
- 5) Protect intellectual property rights; or
- 6) Enforce any special rules related to gold and silver.

### **Article 21. Criteria for Export Licenses**

The Government shall have the right to introduce Export licenses only when it is necessary to:

- 1) Protect national treasures of artistic, cultural, historic or archaeological value;
- 2) Protect endangered species or plants;

- 3) Protect national security;
- 4) Protect environment or exhaustible natural resources;
- 5) Protect intellectual property rights; or
- 6) Enforce any special rules for trade in gold and silver.

#### **Article 22. Authority to Grant Licenses**

1. The competent authority shall be the sole authority competent to decide upon applications for import, transit or export licenses.

2. In order to receive a license the applicant shall apply to the competent authority only, who shall coordinate with relevant state authorities if necessary to secure the issuance of the license.

#### **Article 23. Time Limits to Decide on License Applications**

1. The period for processing applications for import, transit, or export licenses shall not exceed 30 calendar days as of the day of application if applications are considered as and when received.

2. Such period shall not exceed 60 calendar days if all applications are considered simultaneously, where such period shall begin to run on the day following the closing date of the announced application period.

#### **Article 24. Conditions for Issuing of a License**

1. Licenses issued shall specify conditions to be fulfilled by the licensee and the rationale.

2. Detailed conditions for issuance of import, export or transit of certain goods shall be specified by the Government.

3. Licenses may be issued for one or more types of goods.

4. Exceptionally to the provision of paragraph 3 of this Article:

1) In the case of agricultural goods and other goods that may carry a pest or disease that can cause significant harm to the health or life of plants or animals in the Republic of Tajikistan, the license shall be issued for a single type of goods;

2) In the case of artistic, cultural, historical and archeological artifacts the license shall be issued for each particular article or a single license for more articles if they constitute one consignment.

#### **Article 25. Documentation Errors**

1. An application for issuance of a license shall not be refused for the minor documentation errors that do not alter the basic data contained therein.

2. A decision to refuse issuance of a license must be provided to the applicant in writing with the rationale for such a decision.



#### **Article 26. Cancellation of a License**

1. Once issued, the competent authority may cancel the license only if:
  - 1) After the license has been issued a decision was made in accordance with the provisions of this Law to prohibit import or export of goods subject to such a license;
  - 2) A license holder violates the conditions of a license;
  - 3) A license was issued in violation of this Law or other relevant legislation; or
  - 4) A decision to issue the license was based on incorrect information or it has been obtained by deceit.
2. In cases referred to in paragraph 1, subparagraph 1 of this Article, the license shall not be cancelled for quantities of goods that have been paid for, but not delivered, except in the case of urgent circumstances.
3. Urgent circumstances include *inter alia* an outbreak of an animal or plant disease or pest in the Republic of Tajikistan, in the case of export of susceptible agricultural goods, or, in the case of import, in the case of outbreak in the country from which such goods are to be imported, that could cause an unacceptable level of health risk to the human, animal or plant population.

#### **Article 27. Duration of a License**

1. License shall be valid for the period specified in the license, however not exceeding the period of one year. The number of shipments during such period shall not be limited.
2. The competent authority shall maintain the register of issued licenses.
3. The competent authority shall prescribe the content and the manner of maintaining the register of issued licenses.

#### **Article 28. Automatic License**

1. An automatic license shall be issued immediately upon receipt of an application to the extent administratively feasible, but not later than 10 working days upon submitting the complete application. Automatic license may also be issued in a form of a note on the copy of the application submitted, which shall contain a specific filing number.
2. An automatic license shall be issued to each and every applicant who submits the request at any time prior to placing the goods in the appropriate customs procedure accompanied with the proof of payment of a fee for issuing the license, if such fee is payable under the provisions in force.
3. An automatic license shall be valid for a period of one year, automatically extendable upon the request of the license holder. Number of validity extensions shall not be limited.

## **CHAPTER III**

### **SPECIAL REQUIREMENTS**

#### **Article 29. Certifications**

1. Where a contract, domestic or foreign legislation, or international agreement requires that goods being exported or imported should be accompanied by certain certificates or certified documents whose issue or certification is not within the purview of the competent authority, such certificates and documents shall be issued or certified by the authority designated by the Government.

2. The Government shall establish the manner of issuance of certificates and certification of documents referred to in paragraph 1 of this Article.

#### **Article 30. Veterinary, Sanitary and Phytosanitary Requirements**

1. Import, transit and export of animals, plants, animal and plant products, and other goods that may carry or transmit pests and disease that may endanger the life and health of humans, animals or plants, may be prohibited from specific countries or territories thereof based on international recommendations and guidelines, available scientific evidence and the animal and plant health status of such countries or territories relative to that of the Republic of Tajikistan.

2. Import, transit and export of goods shall be subject to relevant veterinary, sanitary and phytosanitary requirements prescribed for particular type of goods, in accordance with the applicable law.

#### **Article 31. Technical Regulations**

1. Conformity with technical regulations applicable in the Republic of Tajikistan may be prescribed as a condition for import of goods.

2. Technical regulations, within the meaning of paragraph 1 of this Article, establish mandatory criteria for placing goods into circulation for the purpose of protection of national security, health and life of humans, plants and animals, and environmental protection. Technical regulations shall apply regardless of origin of goods and may encompass characteristics of goods or methods of processing and production thereof, including applicable mandatory administrative provisions, technical specifications, terminology, symbols, packaging, marking or marking requirements applicable to goods, process or method of production of goods.

3. Conformity with standards cannot be prescribed as a mandatory condition for import of goods, except where the standard is an integral part of the technical regulation referred to in paragraph 1 of this Article.

### **III. FOREIGN TRADE IN SERVICES**

#### **Article 32. Scope**

1. For the purposes of this Law, foreign trade in services shall mean the supply of services:

1) From the territory of the Republic of Tajikistan into the territory of any other country, and from the territory of any other country into the territory of the Republic of Tajikistan;

2) By a domestic person to a foreign person on the territory of the Republic of Tajikistan;

3) By a domestic person through a commercial presence in the territory of any other country, or by a foreign person through commercial presence in the territory of the Republic of Tajikistan; and

4) By a domestic natural person in the territory of any other country, and by a foreign natural person in the territory of the Republic of Tajikistan.

2. For the purpose of paragraph 1, subparagraph 3 of this Article "commercial presence" shall mean any type of business or professional form of organization.

3. Services supplied in the exercise of governmental authority shall not be considered as services within the meaning of paragraph 1 of this Article.

#### **Article 33. Most Favored Nation Treatment**

Most-favored nation treatment shall be accorded to services supplied by foreign persons in the Republic of Tajikistan as required by international agreements recognized by the Republic of Tajikistan, and otherwise as the Government may decide.

#### **Article 34. National Treatment**

National treatment shall be accorded to foreign persons supplying services in the Republic of Tajikistan as required by international agreements recognized by Tajikistan, and otherwise in accordance with the legislation that regulates supply of the particular service.

### **IV. SPECIAL TRADE MEASURES**

#### **Article 35. General Provision**

1. In accordance with the provisions of Articles 36-51 of this Law, the Government shall have the right to restrict imports or exports of goods through the introduction of the following special trade measures:

- 1) Anti-dumping duties,
- 2) Countervailing duties,
- 3) Safeguard measures, and

- 4) Measures to safeguard balance of payments.
2. The Government shall establish the procedure and terms of the implementation of the special trade measures referred to in paragraph 1 of this Article, taking into consideration provisions of relevant WTO agreements.

## **CHAPTER I ANTI-DUMPING AND COUNTERVAILING DUTIES**

### **Article 36 Definitions**

When used in Articles 37-44, the following terms shall have the meaning specified below:

1) *Anti-Dumping Duty* shall mean a special duty imposed on importation of goods in order to offset the effects of dumping.

2) *Dumping* shall mean importation of goods into Tajikistan at less than their normal value, under conditions that cause or threaten to cause material injury to an industry established in Tajikistan or materially retards the establishment of an industry in Tajikistan.

3) *Normal Value* shall be (a) the comparable price for the like product when destined for consumption in the exporting country, in the ordinary course of trade; or (b) if the goods are not sold in the market of the exporting country, either (i) the highest comparable price for the like product for export to any third country with market conditions comparable to those of Tajikistan or (ii) the cost of production of such goods in the country of origin increased by a reasonable amount for administrative, selling and general costs and for profits.

4) *Countervailing Duty* shall mean a special duty imposed on importation of goods in order to offset the effects of any subsidy bestowed, directly or indirectly, in the country of origin or export, for production or export of such goods to Tajikistan.

5) *Subsidy* shall mean any direct or indirect financial or other contribution by a government of the country of origin or export or its bodies, by which a benefit is conferred to a manufacturer or exporter, except where the financial contribution in question is a non-actionable subsidy in accordance with the relevant WTO agreements.

6) *Domestic Industry* shall mean domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except in the case referred to in Article 37, paragraph 3 of this Law.

7) *Like Product* shall mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

### **Article 37. Criteria for Application**

1. The Government may levy an anti-dumping or countervailing duty only where it has been established on the basis of investigations conducted pursuant to the provisions of this Law that:

1) There has been a significant increase in dumped or subsidized imports compared to the level of domestic production or consumption; and

2) There has been significant price undercutting by the dumped or subsidized imports compared with the price of the like domestic product or the prices of such imported products have depressed to a significant degree the price of the like product or have prevented that price from increasing as it would otherwise have done; and

3) As a result, material injury is caused to the domestic industry or there is a threat of such injury to the domestic industry.

2. Countervailing or anti-dumping duties shall not be levied if investigations show that the main factors causing injury to the domestic industry are factors other than subsidized or dumped imports

3. The anti-dumping duty shall not exceed the lesser of the amount necessary to remove the injury to the domestic industry or the amount of the full margin of dumping, i.e. the difference between the Normal Value of goods and the price for such goods when intended for exports to Tajikistan.

4. The countervailing duty shall not exceed the lesser of the amount necessary to remove the injury to the domestic industry or of the full amount of subsidy.

### **Article 38. Investigating Procedure**

1. The competent authority shall conduct an investigation on the basis of a written application made by, or on behalf of the domestic industry.

2. The application shall be considered to have been made by or on behalf of the domestic industry if it is submitted by:

1) domestic producers whose total output accounts for more than 25% of the total domestic production of the like product;

2) total collective output of producers referred to in item 1 of this paragraph constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic producers making the application, expressing either support for or opposition to the application.

3. Producers related to importers or exporters of the subsidized or dumped products or producers who import such products themselves, must not be treated as a part of a domestic industry.

4. The competent authority shall examine the application referred to in paragraph 1 of this Article and determine whether an investigation should be initiated.

5. Notwithstanding provisions of paragraph 1 of this Article if there is sufficient evidence on dumping or subsidy, material injury and a causal link, the competent authority may initiate an investigation ex officio.

6. The competent authority shall not provide information on any request submitted to initiate an investigation. The competent authority shall notify the decision to initiate an investigation and any subsequent phases in the procedure.

7. The investigation shall be concluded within one year after its initiation; however it shall not under any circumstances exceed 18 months.

### **Article 39. Application**

The application for initiation of an investigation shall be accompanied by all necessary evidence, including *inter alia* the following:

- 1) Description of the allegedly dumped product;
- 2) Information about the applicant and that regarding the applicants' share in total volume of the domestic production of the product referred to in item 1 of this Article;
- 3) The names of the exporting countries, each exporter or foreign producer known to applicant, and a list of the importers of the allegedly dumped; and
- 4) Information on the existence of dumping, and/or subsidization, injury to domestic production caused by the dumped or subsidized imports and causal link between dumped or subsidized imports and the injury

### **Article 40. Interested Parties**

1. Interested parties, including industrial users of a product subject to investigation and representative consumer organizations, may participate in the investigation and defend their interests, and shall have the right to:

- 1) Meet those parties with adverse interests;
- 2) Present their views orally;
- 3) Have at their disposal any relevant non-confidential information.

2. The competent authority shall, before a final determination on dumping and/or subsidizing is made, inform all interested parties of the essential facts under consideration, which form the basis for initiation of investigation procedure and invite their opinions within the period of 30 days. Subsequent to expiration of such a time the competent authority shall make a decision.

### **Article 41. Decision**

Where the existence of dumping or subsidizing was confirmed the Government shall decide whether anti-dumping or countervailing duties should be levied.

### **Article 42. Provisional Measures**

1. The Government shall have the right to apply provisional measures after the expiry of 60 days from the day of initiation of the investigation if it was determined that:

- 1) Existence of both the dumping and/or subsidizing and of injury to the domestic industry are probable;
- 2) Delay would cause damage which it would be difficult to repair; and
- 3) Interested parties have been given an opportunity to submit data necessary for protection of their interests.

2. Any decision on application of provisional measures shall be officially published.

3. The application of provisional measures shall not exceed six months in the case of antidumping duties, and four months in the case of countervailing duties.

## **Article 42. Collection and Reimbursement of Duty**

1. If the definitive amount of anti-dumping or countervailing duty is higher than the provisional duty paid or the amount estimated for the purpose of the security, the difference shall be collected.

2. If upon completion of investigation proceedings dumping or subsidizing is not found to exist or the definitive duty is lower than the provisional duty paid or the amount of the security, the difference shall be reimbursed or the duty recalculated as the case may be.

## **Article 44. Duration**

1. Anti-dumping or countervailing duty shall remain in force for as long as necessary to remedy an injury, but not exceeding five years from its imposition or from the last review if it included dumping and injury.

2. During the period referred to in paragraph 1 of this Article, the competent authority shall review the need for the continued imposition of the duty in accordance with the provisions on investigation procedure of this Law. The duty may remain in force in the course of such review.

3. The Government shall abolish the antidumping or countervailing duty where the review referred to in paragraph 2 of this Article indicates that because of the termination of antidumping or countervailing duty, dumping, subsidy or the causal injury to the domestic industry would be unlikely to continue or recur, as the case may be.

## **CHAPTER II**

### **SAFEGUARD MEASURES**

## **Article 45. Criteria for Application**

1. The Government shall have the right to apply measures in order to remedy the injury and distortions to domestic industry caused by increased imports (hereinafter referred to as: Safeguard Measures) if under the provisions of Articles 46-51 it has been determined that a particular product within a period of time is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces the like or directly competitive product.

2. "Domestic industry" referred to in paragraph 1 of this Article shall be the producers of the identical, like or directly competitive products whose collective output constitutes major proportion of the total domestic production of such products in the Republic of Tajikistan.

3. "Serious Injury" referred to in paragraph 1, subparagraph 2 of this Article shall mean a significant overall impairment in the position of a domestic industry.

4. Safeguard measures shall be applied to importation of all products referred to in paragraph 1 of this Article irrespective of their country of origin or the country of exportation.

#### **Article 46. Decision**

1. A decision to apply safeguard measures shall be based on the results of the investigation initiated and conducted *ex officio* by the competent authority.

2. The decision on initiation of an investigation shall be published in an appropriate manner and brought to attention of all interested parties.

#### **Article 47. Form of Safeguard Measures**

1. Safeguard measures may take the form of quantitative restriction or tariff increase. Safeguard measures shall apply only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Measures chosen shall be those most suitable for the achievement of these objectives.

2. If a quantitative restriction is used as a safeguard measure, it shall not reduce the quantity of imports below the average level of imports in three representative years preceding such imports for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

#### **Article 48. Duration**

1. Safeguard measure shall remain in force for as long as necessary to remedy an injury, but not exceeding four years from its imposition.

2. Exceptionally to the provisions of paragraph 1 of this Article the period of application may be extended provided that the Government has determined, in conformity with the procedures set out in this Chapter, that the safeguard measure continues to be necessary and that there is evidence that the industry is adjusting.

3. Safeguard measure that was extended in accordance with provisions of paragraph 2 of this Article shall not be more restrictive than it was before the extension.

4. The total period of application of a safeguard measure shall not exceed eight years

#### **Article 49. Liberalization**

1. Where the duration of a safeguard measure is more than one year, the Government shall progressively liberalize it during the period of application.

2. Where the duration of a safeguard measure exceeds three years, the Government shall review the need for application of such measure not later than the mid-term of the period of application of the measure and, if appropriate, withdraw it or increase the pace of liberalization..

#### **Article 50. Application of the Safeguard Measure**

1. A safeguard measure shall not be applied to the importation of a product that has been previously subject to such measure, before the expiry of a period of time equal to the period of application of such previously applied measure. In any event, such period may not be shorter than two years.



2. Exceptionally to the provisions of the paragraph 1 of this Article, the Government may re-apply safeguard measure against the importation of a product, with duration of 180 days or less, after one year has elapsed, if such safeguard measure has not been applied to the same product more than twice in the preceding five-year period.

#### **Article 51. Provisional Safeguard Measures**

1. The Government may introduce a provisional safeguard measure, for a period not exceeding 200 days, in the form of tariff increase, if the evidence clearly shows that:

1) Increased imports have caused or are threatening to cause serious injury to the domestic industry, and

2) Delay in introducing safeguard measures would cause injury difficult to repair.

2. Any amounts collected pursuant to paragraph 1 of this Article shall be promptly refunded to the importers concerned if the subsequent investigation determines that increased imports have not caused or threatened to cause serious injury to domestic industry.

3. The duration of any provisional safeguard measure shall be calculated in the total duration of the measures referred to in Article 48 of this Law.

### **CHAPTER III**

#### **MEASURES TO SAFEGUARD BALANCE OF PAYMENT**

#### **Article 52. Conditions and Procedure**

1. In order to safeguard the balance of payments, the Government shall have the right to introduce quantitative restrictions on imports of goods, based on the information supplied by the National Bank of the Republic of Tajikistan, may, if it is necessary to:

1) Forestall an imminent threat of, or stop a serious decline in monetary reserves;  
or

2) Achieve an increase of very low monetary reserves.

2. Measures to safeguard the balance of payments shall not be prescribed or implemented for the purpose of protecting domestic producers.

#### **Article 53. Application of Measures to Safeguard Balance of Payments**

1. Measures to safeguard the balance of payments shall stay in effect to the extent necessary, and shall gradually be relaxed with the improvement of the balance of payments.

2. Measures to safeguard the balance of payments shall not apply to imports of goods that are imported for the purpose of protection of intellectual property rights.

## **IV. MISCELANOUS PROVISIONS**

### **Article 54. Cross-border Trade**

1. Cross-border trade shall be carried out, as a rule, on the basis of an international agreement of the Republic of Tajikistan with the neighboring country or a group of neighboring countries providing for special favorable regime applicable to foreign trade in goods and services carried out solely to meet local needs for goods and services produced within the respective border areas and intended for use by natural persons who have permanent residence in such territories and legal persons located in such territories. Such a favorable regime shall not extend to other countries or groups of countries with which the Republic of Tajikistan has concluded international agreements providing for the most favored nation treatment.

2. The manner of carrying out cross-border trade and the relevant border territories, where the special favorable regime is to be applied shall be determined by the Government in accordance with the international agreements of the Republic of Tajikistan with specific countries.

## **V. GURANTEE OF RIGHTS AND RESPONSIBILITY FOR VIOLATIONS**

### **Article 55. Guarantee of Rights and Interests of Participants in Foreign Trade Activity**

1. The Republic of Tajikistan shall guarantee the rights and interests of the participants in foreign trade activity.

2. In case of adoption by the state authorities of the Republic of Tajikistan of any acts violating rights of the participants in foreign trade activity granted under this Law, any of their losses shall be compensated by such authorities in the court proceedings in accordance with the legislation of the Republic of Tajikistan and provisions of the international law.

### **Article 56. Suspension and Termination of Foreign Trade Activity**

Activity of participants of foreign trade shall be suspended or terminated in accordance with the court decision only, under the circumstances provided for by the legislation of the Republic of Tajikistan. Decision on suspension or termination of foreign trade activity shall be appealable in the appropriate court proceedings.

**Article 57. Responsibility for Violation of this Law**

For any violations of this Law and any other provisions of legal acts regulating foreign trade activity, violators shall be held responsible in accordance with the legislation of the Republic of Tajikistan.

**VI. TRANSITIONAL AND FINAL PROVISIONS**

**Article 58. Rights Granted by Individual Legal Acts or Decisions**

All rights related to foreign trade activities granted by individual legal acts or administrative decisions, which were not exercised entirely by the day this law enters into effect, may be exercised within the time limits set by such acts or decisions.

**Article 59. Implementing Regulations**

The regulations necessary for application of this Law shall be passed not later than six months after the day this Law comes into effect.

**Article 60. Legal Acts That Cease to be Effective**

On the day this Law comes into effect, the following laws and legal acts shall cease to be effective:

- 1) The Law of the Republic of Tajikistan on Foreign Trade Activity
- 2) Customs Code of the Republic of Tajikistan, Article 344

**Article 61. Coming into Force**

This Law shall come into force after its official publication.