

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 of executive power on economic policy affairs as well as by a competent republican agency of the Autonomous Crimean Republic, a structural unit of the Oblast, Kyiv and Sevastopol City State Administrations - within the limits of powers granted by the central agency of executive power on economic policy affairs.

In the event that a subject of foreign economic activities violates procedures for engaging into such activities, which procedures are specified by this Law and other Laws of Ukraine, the individual regime of licensing may be applied to such subject pursuant to Article 37 of this Law.

Licenses shall be issued on the basis of applications filed by subjects of foreign economic activities, which applications must be filed in the form as is prescribed by the central agency of executive power on economic policy affairs.

As a rule, applicants must apply to one agency of executive power. If it is necessary to obtain an approval, it shall be possible to apply to several agencies of executive power, but not more than three such agencies.

Applications for licenses shall be reviewed in the order as they have been received, which order will be determined by dates, on which such applications were registered, or shall be reviewed simultaneously upon the lapse of the deadline for their filing.

The following details must be indicated in an application for a license: the full name of a subject of foreign economic activities, the last name and first name of its manager, the name and code of a good (goods) pursuant to the Ukrainian Classification of Good in Foreign Economic Activities (the UCG FEA), the name of the producer, the customer of the good (goods), the code and name of the country (countries) of origin and designation – in the event of exportation, the code and name of the country (countries) of origin and shipment – in the event of importation, the term of the license, the quantity and value of the good (goods), the code and name of a customs office, the full names and addresses of the seller and the buyer, the type of transaction, the currency of payment, the main and additional units of measurement of the good (goods), confirmations with agencies of executive power (if need be), the ground for requesting the license, and special terms and conditions of the license.

Documents and information, which are considered as necessary to confirm data specified in the application and the foreign economic agreement (contract), may be required to be filed together with the application.

An application may not be rejected in the event of minor errors committed in documents that are submitted in order to obtain a license, if such errors do not change the basic data contained in the application. Data contemplated by terms and conditions of the foreign economic agreement (contract) shall be regarded as basic.

In the event that a regime of automatic licensing is introduced, the time period for issuance of the license must not exceed 10 business days as from the date, on which the application and other required documents complying with the prescribed requirements were received. A license may not be denied to be issued if all documents complying with the prescribed requirements have been filed.

In the event that a regime of non-automatic licensing is introduced:

the time period for review of applications must not exceed 30 days from the date, on which an application was received, if such applications are reviewed in the order as they have been received, and must not exceed 60 days, beginning on the date, on which the declared application filing deadline lapsed, if all applications are reviewed simultaneously;

the license shall be issued on the basis of an application within a quota, with specification of the term of the license;

if as at the date, on which an application is filed (if a procedure is used whereby applications are reviewed in the order as they have been received), the prescribed quotas (quantitative or other restrictions) have been exhausted, such application shall not be reviewed. The subject of foreign economic activities that filed the relevant application shall be notified in writing, within 7 business days following the receipt of the application, about the fact that the quotas (quantitative or other restrictions) were exhausted;

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.

A fee shall be charged for an issued license, the amount of which fee shall be prescribed by the Cabinet of Ministers of Ukraine subject to actual costs associated with using the licensing procedure.

Customs clearance of goods whose exportation (importation) is subject to licensing shall be effected only if there is available a respective license.

The central agency of executive power on economic policy affairs shall provide notice on a monthly basis to the central agency of executive power in the customs area about issued licenses for exportation (importation) of goods that are subject to licensing.

The central agency of executive power in the customs area shall provide the central agency of executive power on economic policy affairs with information on quantities of exports (imports) of goods under the issued licenses.

Commodity exchange (barter) operations shall be licensed in the event that the subject matter of these operations is goods whose exportation (importation) is subject to licensing.

Exportation (importation) of disks for laser reading systems, matrixes, equipment and raw materials for their production shall be licensed subject to the requirements of laws governing issues and matters of production, exportation (importation) of disks for laser reading systems pursuant to the licensing procedures specified by this Article.

Licensing shall not extend onto exports and sales of compensation and profit-related products received by an investor into ownership under terms and conditions of a product sharing agreement entered into pursuant to the requirements of the Law of Ukraine "On Product Sharing Agreements". It shall be prohibited to introduce any restrictions on exports and sales of such products, including quantitative restrictions, unless otherwise provided by the product sharing agreement.

The licensing procedures as are laid down by this Article shall not extend onto exports (imports) of goods specified in Article 20 of this 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 a competent committee of the WTO to be provided within 60 days from the date of publication and furnishing of copies of such publications.

The publication must contain the following information:

- the list of goods that are subject to licensing;
- a point of contact that provides information on eligibility to obtain a license;
- the administrative agency (agencies), with which applications for licenses should be filed;
- the date and name of the gazette, in which licensing procedures are set out;
- the indication of whether licensing is automatic or non-automatic;
- administrative goals – in the case with automatic import licensing procedures;
- the indication of measures that are undertaken through licensing procedures – in the case with non-automatic import licensing procedures;
- an expected term of duration of the licensing procedures, if such term may be ascertained with a certain degree of likelihood, and if it is not possible – the reason why this information cannot be provided.

In the event that a quota is allocated among supplying countries, information on allocations of the quota shall be published, and notice thereof shall be provided to other countries that are interested in supplying certain goods into Ukraine.

Official publication shall be effected within a period of time not later than the date, on which the regime of licensing will be introduced.

At a request of an interested WTO Member, information on the following must be provided:

- the manner, in which restrictions will be applied;
- the number of licenses issued over a certain period of time, indicating (if necessary) the quantity and/or value of goods;
- allocations of licenses among the supplying countries;
- statistical data on quantities and/or the value of goods.

The effect of this Article shall not extend onto operations of the National Bank of Ukraine that are carried out by it in accordance with the Law of Ukraine “On the National Bank of Ukraine”.

Subjects of foreign economic activities, which engage into foreign economic operations without respective licenses, shall be subject to fines pursuant to Article 37 of this Law in the amount of 10% of the value of the accomplished operation as calculated in the Ukrainian hryvnias pursuant to the official exchange rate of the Ukrainian hryvnia against foreign currencies as set by the National Bank of Ukraine on the date, on which such an operation was accomplished.

The fines shall be collected by offices of the State Tax Service on the basis of applicable resolutions of the central agency of executive power on economic policy affairs pursuant to the procedures as are laid down in the Law of Ukraine “On Procedures for the Repayment by Taxpayers of Arrears to Budgets and State Target Funds”.

Article 17. Prohibition of Some Types of Export and Import

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;

introduction of a combined regime of quotas;
introduction of indicative prices for imports and/or exports of goods;
other measures contemplated by the laws and international treaties of Ukraine.

In the event that Ukraine and the country, which has applied in respect of Ukraine such actions as contain features of actions of discrimination and/or unfriendly actions, are members of one and the same international inter-governmental organization, the disputed matter shall be reviewed and settled in accordance with the rules and procedures of such an organization.

In the event that Ukraine and the customs unions or economic group, which has applied in respect of Ukraine such actions as contain features of actions of discrimination and/or unfriendly actions, are members of one and the same international inter-governmental organization, the disputed matter shall be reviewed and settled in accordance with the rules and procedures of such an organization.

Decisions to apply measures in response to actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups shall be adopted by government agencies that regulate foreign economic activities, pursuant to recommendations of the Interdepartmental Commission for International Trade, within limits of their competence.

In order to establish facts of actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups, the central agency of executive power on economic policy affairs shall carry out investigations according to the procedures laid down by the Cabinet of Ministers of Ukraine.

Findings of such investigations shall be reviewed by the Interdepartmental Commission for International Trade which will draw up recommendations addressed to competent government agencies in respect of application of appropriate measures. On the basis of findings of investigations, the central agency of executive power on economic policy affairs, together with the Ministry of Foreign Affairs, shall contact relevant government and/or competent authorities of other countries, customs unions or economic groups with proposals to settle the disputed matters.

In the event of a positive response from the specified authorities, the central agency of executive power on economic policy affairs shall form a delegation to negotiate and prepare appropriate international agreements and treaties of an inter-departmental or inter-governmental nature.

If relevant government and/or competent authorities of other countries, customs unions or economic groups have provided no formal consent to the application of international law means for settling international disputes and/or in the event that actions of discrimination and/or unfriendly actions of these authorities directly or indirectly violate international treaties and agreements of Ukraine with these countries, customs unions or economic groups, the central agency of executive power on economic policy affairs shall, within limits of its competence, and pursuant to recommendations of the Interdepartmental Commission for International Trade, submit on its own the findings to the Cabinet of Ministers of Ukraine for adoption of appropriate decisions to apply the necessary measures.

Applying of measures in response to actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups shall be discontinued in the event that such actions of discrimination and/or unfriendly actions of other countries, customs unions or economic groups against Ukraine are discontinued, an appropriate agreement is signed and/or losses are reimbursed for.

Acts of the Cabinet of Ministers of Ukraine regarding the settlement of such disputes and application of measures in response to actions of discrimination and/or

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.