

LAW OF UKRAINE

On Amendments to Article 16 of the Law of Ukraine "On Foreign Economic Activities"

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

1. To restate Article 16 in the Law of Ukraine "On Foreign Economic Activities" (959-12) (Vidomosti Verkhovnoji Rady URSR, 1991, No. 29, page 377; Vidomosti Verkhovnoji Ukrainy, 1993, No. 5, page 33, No. 12, page 109, No. 17, page 184; 1994, No. 20, page 120; 1999, No. 7, page 49; 2000, No. 24, page 186, No. 38, page 318; 2002, No. 17, page 121) as follows:

"Article 16. Licensing of Foreign Economic Operations

Licensing of foreign economic operations is defined as a set of actions by an agency of executive power 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 actions by an agency of executive power 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.

Non-automatic licensing is defined as a set of actions by an agency of executive power 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.

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 Ukrainian domestic market, especially as regards agricultural products, fish products, food industry products and essential consumer goods or other goods that are important for life in Ukraine;

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 precious metals, except for bank metals;

a need to apply measures aimed to protect domestic producers;

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

a need to secure compliance with Ukraine's international treaties and agreements.

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 ineffective);

an abrupt decrease in or a minimal amount of gold 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;

importation of precious metals, except for bank metals;

a need to apply measures aimed to protect domestic producers;

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

a need to secure compliance with Ukraine's international treaties and agreements.

Decisions to introduce a regime of licensing for exports (imports) of goods, including imposition of quotas (quantitative or other restrictions), shall be adopted by the Cabinet of Ministers of Ukraine upon submissions of the central agency of executive power for economic policies with indication of a list of specific goods whose export (import) is subject to the regime of licensing, and time periods during which such regime and quantitative or other restrictions will be in effect with respect to each of the goods.

In the event that anti-dumping, countervailing or special 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 and, within the limits of powers granted thereto, by a competent agency of the Autonomous Crimean Republic, a structural unit of the Oblast, Kyiv and Sevastopol City State Administrations.

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 confirmation, 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 altogether 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) (2371-14), the name of a producer, a customer of the good (goods), the code and name of a country (countries) of origin and designation – in the event of exportation, the code and name of a 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 name and address of a seller and a buyer, the type of a transaction, currency of payment, the main and additional units of measure and the price of the good (goods), confirmations with agencies of executive power (if need be), and special terms and conditions of the license.

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

An application may not be rejected in the event of 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, an application for a license and other required documents may be filed on any business day prior to customs clearance of goods. 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.

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 altogether;

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 seven 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 into account information on the use of the earlier obtained licenses, provided that subjects of foreign economic activities have complied with the requirements of law on protection of economic competition.

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.

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 the application of the licensing procedure.

Customs clearance of goods shall be effected if a customs office is provided with an original license obtained by a subject of foreign economic activities.

A copy of the license shall be attached to a cargo customs declaration in the course of declaration of goods, whose exportation (importation) is subject to the regime of licensing, and shall be one of the grounds for passage of such goods through the customs border of Ukraine.

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 the regime of 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 on matters of production, exportation (importation) of disks for laser reading systems pursuant to the licensing procedures specified by this Article.

The regime of 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" (1039-14). It shall be prohibited to introduce any restrictions on exports and sales of such products, including quantitative restrictions, unless otherwise provided in 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 the regime of licensing, information on the term of a license 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 World Trade Organization (the WTO) to be provided within 60 days from the date of publication and furnishing of copies of such gazettes.

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 prior to 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:

procedures under 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 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" (679-14).

2. This Law shall enter into force in 60 days following the date of publication hereof.

L. Kuchma
President of Ukraine

city of Kyiv
20 November 2003
No. 1315-IV