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对外技术贸易

FOREIGN TECHNOLOGY TRADE

中国法制出版社

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中华人民共和国对外贸易法

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主席令第22号公布 1994年7月1日起施行)

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第一章 总 则

第一条 为了发展对外贸易，维护对外贸易秩序，促进社会主义市场经济的健康发展，制定本法。

第二条 本法所称对外贸易，是指货物进出口、技术进出口和国际服务贸易。

第三条 国务院对外经济贸易主管部门依照本法主管全国对外贸易工作。

第四条 国家实行统一的对外贸易制度，依法维护公平的、自由的对外贸易秩序。

国家鼓励发展对外贸易，发挥地方的积极性，保障对外贸易经营者的经营自主权。

Foreign Trade Law of the People's Republic of China

(Adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress on May 12, 1994, promulgated by Order No.22 of the President of the People's Republic of China on May 12, 1994, and effective as of July 1, 1994)

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Chapter I General Provisions

Article 1 This Law is formulated with a view to developing foreign trade, maintaining the order of foreign trade and promoting a sound development of the socialist market economy.

Article 2 Foreign trade as used in this Law refers to the import and export of goods and technologies, and the international service trade.

Article 3 The competent department in charge of foreign economic relations and trade under the State Council shall be in charge of the work of foreign trade throughout the country in accordance with this Law.

Article 4 The State shall institute a uniform system of foreign trade and safeguard a fair and free foreign trade order in accordance with the law.

The State shall encourage the development of foreign trade, bring into play the initiative of localities and ensure the independence of management of foreign trade operators.

第五条 中华人民共和国根据平等互利的原则，促进和发展同其他国家和地区的贸易关系。

第六条 中华人民共和国在对外贸易方面根据所缔结或者参加的国际条约、协定，给予其他缔约方、参加方或者根据互惠、对等原则给予对方最惠国待遇、国民待遇。

第七条 任何国家或者地区在贸易方面对中华人民共和国采取歧视性的禁止、限制或者其他类似措施的，中华人民共和国可以根据实际情况对该国家或者该地区采取相应的措施。

第二章 对外贸易经营者

第八条 本法所称对外贸易经营者，是指依照本法规定从事对外贸易经营活动的法人和其他组织。

第九条 从事货物进出口与技术进出口的对外贸易经营，必须具备下列条件，经国务院对外经济贸易主管部门许可：

- (一) 有自己的名称和组织机构；
- (二) 有明确的对外贸易经营范围；
- (三) 具有其经营的对外贸易业务所必需的场所、资金和专业人员；
- (四) 委托他人办理进出口业务达到规定的实绩或者具有必需的进出口货源；
- (五) 法律、行政法规规定的其他条件。

前款规定的实施办法由国务院规定。

外商投资企业依照有关外商投资企业的法律、行政法规的规定，进口企业自用的非生产物品，进口企业生产所需的设备、原材料和

Article 5 The People's Republic of China promotes and develops trade relations with other countries and regions in accordance with the principle of equality and mutual benefit.

Article 6 The People's Republic of China in foreign trade grants the most favoured nation treatment and the national's treatment to other signatories or acceding parties on the basis of the international treaties and agreements that China has signed or acceded to, or to the other party under the principle of mutual benefit and reciprocity.

Article 7 Where a country or a region adopts prohibitive, restrictive or other similar measures that are discriminative in nature against the People's Republic of China in trade, the People's Republic of China may, in the light of the actual conditions, adopt corresponding counter-measures against such a country or region.

Chapter II Foreign Trade Operators

Article 8 Foreign trade operators as used in this Law refer to the legal persons or other organizations engaged in the operative activities of foreign trade in accordance with the provisions of this Law.

Article 9 Foreign trade operators handling the import and export of goods or technologies must satisfy the following conditions, and obtain the permission from the competent department in charge of foreign economic relations and trade under the State Council:

- (1) having their own names and organizational structures;
- (2) having clear-cut business scopes of foreign trade;
- (3) having premises, funds and professionals needed for the foreign trade business they are engaged in;
- (4) having fulfilled the required performance or having necessary sources of goods for import and export in the case of entrusting others to handle imports and exports; and
- (5) other conditions provided by laws and administrative rules and regulations.

The measures for the implementation of the provisions of the preceding paragraph shall be formulated by the State Council.

Enterprises with foreign investment shall be free from obtaining the permission as stipulated in the first paragraph of this Article, if they in accordance with the laws and administrative rules and regulations governing enterprises with foreign

其他物资，出口其生产的产品，免予办理第一款规定的许可。

第十条 国际服务贸易企业和组织的设立及其经营活动，应当遵守本法和其他有关法律、行政法规的规定。

第十一条 对外贸易经营者依法自主经营、自负盈亏。

第十二条 对外贸易经营者从事对外贸易经营活动，应当信守合同，保证商品质量，完善售后服务。

第十三条 没有对外贸易经营许可的组织或者个人，可以在国内委托对外贸易经营者在其经营范围内代为办理其对外贸易业务。

接受委托的对外贸易经营者应当向委托方如实提供市场行情、商品价格、客户情况等有关的经营信息。委托方与被委托方应当签订委托合同，双方的权利义务由合同约定。

第十四条 对外贸易经营者应当按照国务院对外经济贸易主管部门的规定，向有关部门提交与其对外贸易经营活动有关的文件及资料。有关部门应当为提供者保守商业秘密。

第三章 货物进出口与技术进出口

第十五条 国家准许货物与技术的自由进出口。但是，法律、行政法规另有规定的除外。

第十六条 属于下列情形之一的货物、技术，国家可以限制进口或者出口：

（一）为维护国家安全或者社会公共利益，需要限制进口或者出口的；

（二）国内供应短缺或者为有效保护可能用竭的国内资源，需要限制出口的；

investment import non-productive goods for their own uses, or necessary equipment, raw materials and other goods for their production, or export their own products.

Article 10 The establishment of the international service trading enterprises and organizations and their business activities shall comply with the provisions of this Law and other relevant laws and administrative rules and regulations.

Article 11 Foreign trade operators shall in accordance with the law enjoy full autonomy in their management and shall be responsible for their own profits and losses.

Article 12 Foreign trade operators shall, in conducting foreign trade activities, honor contracts, ensure product quality and improve after-sale service.

Article 13 Organizations or individuals without permits for foreign trade business may entrust foreign trade operators within China to conduct foreign trade businesses on their behalf within the business scope of the trustees.

The foreign trade operators who are entrusted to conduct foreign trade business shall truthfully provide the trustors with market information, commodity prices, information about clients and other relevant business information. The trustors and trustees shall conclude a trusteeship contract in which the rights and obligations of both parties shall be specified.

Article 14 Foreign trade operators shall, in accordance with the provisions of the competent department in charge of foreign economic relations and trade under the State Council, present documents and material pertinent to their foreign trade business to the relevant departments. The departments concerned shall keep business secrets for such providers.

Chapter III Import and Export of Goods and Technologies

Article 15 The State shall allow free import and export of goods and technologies, however, except as otherwise provided for in laws or administrative rules and regulations.

Article 16 The State may restrict the import and export of the goods and technologies under any of the following circumstance:

(1) for safeguarding national security or public interests, there is need to restrict imports or exports;

(2) due to short supply on domestic market or for effective conservation of exhaustible domestic resources, there is need to restrict exports;

- (三) 输往国家或者地区的市场容量有限，需要限制出口的；
- (四) 为建立或者加快建立国内特定产业，需要限制进口的；
- (五) 对任何形式的农业、牧业、渔业产品有必要限制进口的；
- (六) 为保障国家国际金融地位和国际收支平衡，需要限制进口的；
- (七) 根据中华人民共和国所缔结或者参加的国际条约、协定的规定，需要限制进口或者出口的。

第十七条 属于下列情形之一的货物、技术，国家禁止进口或者出口：

- (一) 危害国家安全或者社会公共利益的；
- (二) 为保护人的生命或者健康，必须禁止进口或者出口的；
- (三) 破坏生态环境的；
- (四) 根据中华人民共和国所缔结或者参加的国际条约、协定的规定，需要禁止进口或者出口的。

第十八条 国务院对外经济贸易主管部门应当会同国务院有关部门，依照本法第十六条、第十七条的规定，制定、调整并公布限制或者禁止进出口的货物、技术目录。

国务院对外经济贸易主管部门或者由其会同国务院有关部门，经国务院批准，可以在本法第十六条、第十七条规定的范围内，临时决定限制或者禁止前款规定目录以外的特定货物、技术的进口或者出口。

第十九条 对限制进口或者出口的货物，实行配额或者许可证管理；对限制进口或者出口的技术，实行许可证管理。

实行配额或者许可证管理的货物、技术，必须依照国务院规定经国务院对外经济贸易主管部门或者由其会同国务院有关部门许可，方可进口或者出口。

(3) due to the limited market capacity in the country or region of destination, there is need to restrict exports;

(4) for establishing or speeding up the establishment of a particular domestic industry, there is need to restrict imports;

(5) for any form of agricultural, animal husbandry or fishery products, there is necessity to restrict imports;

(6) for safeguarding the State's international financial position and ensuring the balance of international receipts and payments, there is need to restrict imports; or

(7) under the international treaties or agreements signed or acceded to by the People's Republic of China, there is need to restrict imports or exports.

Article 17 The State shall prohibit the import or export of the goods and technologies falling into any of the following categories:

(1) those that endanger national security or public interests;

(2) those whose import or export must be prohibited for the protection of human life or health;

(3) those that impair ecological environment; or

(4) under the international treaties or agreements signed or acceded to by the People's Republic of China, the prohibition of import or export is required.

Article 18 The competent department in charge of foreign economic relations and trade under the State Council shall, in collaboration with other relevant departments under the State Council, formulate, readjust and publicize the catalogue of goods and technologies whose import or export is prohibited or restricted according to the provisions in Articles 16 and 17 of this Law.

The competent department in charge of foreign economic relations and trade under the State Council may, independently or jointly with relevant departments under the State Council, subject to the approval of the State Council and within the scope stipulated in Articles 16 and 17 of this Law, specially decide to restrict or prohibit the import or export of specific goods or technologies which are not included in the catalogue specified in the preceding paragraph.

Article 19 Goods under import or export restrictions shall be managed by distributing quotas or issuing licences; while technologies under import or export restrictions shall be managed by issuing licences.

Goods and technologies managed by distributing quotas or issuing licences may be imported or exported, as prescribed by the State Council, only with the permission of the competent department in charge of foreign economic relations and trade under the State Council or together with relevant departments under the State Council.

第二十条 进出口货物配额，由国务院对外经济贸易主管部门或者国务院有关部门在各自的职责范围内，根据申请者的进出口实绩、能力等条件，按照效益、公正、公开和公平竞争的原则进行分配。

配额的分配方式和办法由国务院规定。

第二十一条 对文物、野生动植物及其产品等货物、物品，其他法律、行政法规有禁止进出口或者限制进出口规定的，依照有关法律、行政法规的规定办理。

第四章 国际服务贸易

第二十二条 国家促进国际服务贸易的逐步发展。

第二十三条 中华人民共和国在国际服务贸易方面根据所缔结或者参加的国际条约、协定中所作的承诺，给予其他缔约方、参加方市场准入和国民待遇。

第二十四条 国家基于下列原因之一，可以限制国际服务贸易：

- (一) 为维护国家安全或者社会公共利益；
- (二) 为保护生态环境；
- (三) 为建立或者加快建立国内特定的服务行业；
- (四) 为保障国家外汇收支平衡；
- (五) 法律、行政法规规定的其他限制。

第二十五条 属于下列情形之一的国际服务贸易，国家予以禁止：

- (一) 危害国家安全或者社会公共利益的；
- (二) 违反中华人民共和国承担的国际义务的；
- (三) 法律、行政法规规定禁止的。

第二十六条 国务院对外经济贸易主管部门和国务院有关部门，

Article 20 Quotas for import and export of goods shall be distributed by the competent department in charge of foreign economic relations and trade under the State Council or by relevant departments under the State Council within their respective functions and responsibilities on the principles of efficiency, impartiality, transparency and fair competition and according to the performance and ability of the applicants in import or export and other conditions.

Ways and measures for the distribution of quotas shall be prescribed by the State Council.

Article 21 In respect of cultural relics, wild animals and plants and their products as well as other goods and merchandise, if their imports or exports are prohibited or restricted under other laws or administrative rules and regulations, the provisions of such laws or administrative rules and regulations shall be applied.

Chapter IV International Service Trade

Article 22 The State shall promote the progressive development of international service trade.

Article 23 The People's Republic of China shall, in international service trade, grant other signatories and acceding parties market access and national's treatment according to the commitments made in the international treaties or agreements it has signed or acceded to.

Article 24 The State may restrict international service trade on the basis of any of the following considerations:

- (1) for safeguarding national security or public interests;
- (2) for protecting ecological environment;
- (3) for establishing or speeding up the establishment of a particular domestic service industry;
- (4) for ensuring the State's balance of international receipts and payments; or
- (5) other circumstances calling for such restrictions as provided by laws or administrative rules and regulations.

Article 25 The State shall prohibit the international service trade falling into any of the following categories:

- (1) that endangering national security or public interests;
- (2) that running counter to the international commitments undertaken by the People's Republic of China; or
- (3) that prohibited by laws and administrative rules and regulations.

Article 26 The competent department in charge of foreign economic