

Foreign Trade Act (Republic of Korea)

By Ministry of Legislation

INTRODUCTION

Details of Enactment and Amendment

- **Enactment:** This Act was enacted on December 31, 1986 as Act No. 3895, repealing the previously enforced Trade Transaction Act, Promotion of Industrial Equipment Export Act, and Export Cooperatives Act, in order to introduce advanced trade systems such as that for maintaining order in importation-exportation and that for realizing fair trade and to prepare the systems and procedures for providing timely relief for the damages to domestic industries following the opening of the market to imports.
- **Amendment:** This Act has been wholly amended in 1996 after its enactment and has taken its present form after being amended two times (on February 5, 1999; December 29, 2000) since its whole amendment.

Main Contents

- The "trade" is defined as exports and imports of goods and immaterial goods of electronic forms having economic value, and the concept of "electronic trade" is introduced to describe any trade implemented in whole or in part by means of information and communications networks, etc.
- The Minister of Commerce, Industry and Energy shall make efforts to promote electronic trade by designating an electronic trade agency from among institutions, corporations and organizations which provide any service necessary for electronic trade, such as the recommendation of trade through information and communications networks and the education and publicity of electronic trade and by supporting that electronic trade agency.
- Exports and imports of goods and the subsequent collection and payment of their costs shall be free in general, but, as an exception, approval of the Minister of Commerce, Industry and Energy is required for the goods necessary for carrying out the duties under treaties and the generally accepted international laws and regulations and for preserving biological resources.
- The Minister of Commerce, Industry and Energy shall make efforts to establish systems for scientific administration of trade functions, for example, an electronic data interchange system, so that the export and import transactions can be carried out efficiently.
- When there is an application from a person who intends to export industrial equipment, the Minister of Commerce, Industry and Energy may approve the export of the industrial equipment in question.

- A person who intends to export/import the goods with regard to which the Minister of Commerce, Industry and Energy has given a public notice as requiring marks of their places of origin so as to promote a fair trade order shall indicate the place of origin on those goods.
- A trader shall not commit any act that disturbs the good order in importation and exportation, such as exportation/importation of goods that violate patent rights and copyrights, etc. or fraudulent indication of the place of origin.
- A corrective measure may be ordered against, or a penalty charge not exceeding thirty million won may be imposed on, a person who commits an unfair trade act, such as the act of damaging or modifying the mark of the place of origin, and a person who fails to comply with an order of corrective measure shall be criminally punished by imprisonment for no more than three years or by fine of no more than thirty million won.

Wholly Amended by Dec. 30, 1996 Act No. 5211

Amended by Dec. 13, 1997 Act No. 5453

Sep. 16, 1998 Act No. 5551

Feb 5, 1999 Act No. 5768

Feb 5, 1999 Act No. 5815

Feb 8, 1999 Act No. 5825

Dec. 29, 2000 Act No. 6305

Dec. 29, 2000 Act No. 6316

Feb. 3, 2001 Act No. 6417

CHAPTER I GENERAL PROVISIONS

■ Article 1 (Purpose)

The purpose of this Act is to contribute to the growth of the national economy by means of contriving to maintain the balance of international payments and to expand commerce, and through promoting foreign trade and establishing fair trade system.

■ Article 2 (Definitions)

The definitions of terms used in this Act are as follows:

1. The term "trade" means the exportation and importation of goods and intangibles of electronic forms (hereinafter referred to as the "goods") as prescribed by the Presidential Decree;

2. The term "goods" means movables other than documents evidencing means of payment, securities, and claims as prescribed by the Foreign Exchange Control Act;

3. The term "trader" means any person who delegates all or part of the exportation or importation of goods, etc. to other persons or who engages therein, such as an exporter or importer, a person who is delegated by an overseas exporter or importer, and a person who delegates the exportation or importation of goods to other persons;

4. and 5. Deleted; and

6. The term "electronic trade" means all or part of any such trade as implemented by means of apparatus having the information processing capability, such as a computer, and networks of information and communications.

■ Article 3 (Principle of Free and Fair Trade, etc.)

(1) Trade in the Republic of Korea shall be based on the principle of free and fair trade in accordance with the treaties concerning trade which are concluded and promulgated under the Constitution and the generally accepted international rules.

(2) When there are provisions which restrict trade in this Act, other Acts, treaties on trade which are concluded and promulgated under the Constitution, or the generally accepted international rules, the Government shall apply the restrictions within the minimum limits necessary for achieving the purposes of such restrictions.

■ Article 4 (Measures for Promotion of Trade)

(1) The Minister of Commerce, Industry and Energy may, if deemed necessary for the promotion of trade, take measures to continuously increase the export and import of goods, etc. in accordance with the Presidential Decree.

(2) The Minister of Commerce, Industry and Energy may provide supports for a person falling under any one of the following subparagraphs in accordance with the Presidential Decree when it is deemed to be necessary for the promotion of trade provided for in the provisions of paragraph (1):

1. A person dealing with a business of advice, guidance, overseas advertisement, exhibition, training, consulting and good offices, etc. for the purpose of the promotion of trade;

2. A person dealing with a business of installing or operating a trade exhibition hall or a trade training center, etc.; or

3. A person dealing with a business of establishing or operating the system of scientific administration of trade matters.

■ **Article 5 (Special Measures such as Restrictions on Trade, etc.)**

In any case falling under any of the following subparagraphs, the Minister of Commerce, Industry and Energy may restrict or prohibit the export and import of goods, etc. in accordance with the Presidential Decree:

1. Where the Republic of Korea or her trade partner (hereinafter referred to as the "trade partner") is involved in war, or natural disaster;
2. Where a trade partner denies rights and benefits of the Republic of Korea recognized by treaties and the generally accepted international rules;
3. Where a trade partner imposes unfair or discriminatory burdens or restrictions upon the trade of the Republic of Korea;
4. Where it is necessary to perform duties for the maintenance of international peace and security provided for in treaties on trade concluded and promulgated under the Constitution and the generally accepted international rules; or
5. Where it is necessary for the protection of life, health and safety of human beings, life and health of animals or plants, preservation of the environment, or domestic resources.

■ **Article 6 (Consultation, etc. as to Acts or Subordinate Statutes, etc. on Trade)**

(1) Trade shall be governed by this Act.

(2) Where the head of the administrative agency concerned intends to enact or amend Acts and subordinate statutes, directives or public notices by which the export and import of goods, etc are restricted (hereinafter referred to as the "guidelines of export and import"), he shall, in advance, consult with the Minister of Commerce, Industry and Energy. In this case, the Minister of Commerce, Industry and Energy may request the head of the administrative agency concerned to adjust the guidelines of export and import.

■ **Article 7 Deleted.**

CHAPTER II PROMOTION OF COMMERCE

■ **Article 8 (Establishment of Plans for Promotion of Commerce)**

(1) The Minister of Commerce, Industry and Energy shall annually establish plans for the promotion of commerce in the following year in order to promote trade and commerce.

(2) Plans for the promotion of commerce under the provisions of paragraph (1) shall contain matters falling under the following subparagraphs:

1. Basic direction of plans for the promotion of commerce;
2. Analysis and forecast of international commerce conditions;
3. Action plans for trade related negotiations and overseas industrial cooperation;
4. Plans to support exploration of foreign markets such as advice, guidance, overseas advertisement, exhibition, consulting and good offices, and training of professional manpower, etc. for the promotion of commerce;
5. Schemes for collection, analysis, and use of information concerning commerce; and
6. Other matters set forth in the Presidential Decree.

(3) In order to collect basic materials necessary for the establishment of plans for the promotion of commerce under the provisions of paragraph (1), the Minister of Commerce, Industry and Energy may investigate systems, practices, etc. concerning commerce of trade partners, and difficulties for Korean companies doing business overseas.

(4) The Minister of Commerce, Industry and Energy may request that Korean companies doing business overseas provide necessary materials for the establishment of plans for the promotion of commerce under the provisions of paragraph (1), and, if necessary, may take supporting measures.

(5) In establishing plans for the promotion of commerce under the provisions of paragraph (1), the Minister of Commerce, Industry and Energy shall seek, in advance, opinions from the Special Metropolitan City Mayor, Metropolitan City Mayors, or *Do* governors (hereinafter referred to as the "Mayor/*Do* governor"), and shall give notice of such plans to the Mayor/*Do* governors after the establishment of plans for the promotion of commerce. The same shall also apply in case of changing the plans.

(6) The Mayor/*Do* governor shall establish and implement appropriate plans for the promotion of commerce in each jurisdictional area, when he or she receives the notice of plans for the promotion of commerce under the provisions of paragraph (5).

(7) The Mayor/*Do* governor shall give notice of such plans to the Minister of Commerce, Industry and Energy, when he or she has established plans for the promotion of commerce in each jurisdictional area under the provisions of paragraph (6). The same shall also apply in case of changing the plans.

■ **Article 9 (Assistance, etc. to Cooperative Activities by Private Sectors)**

(1) When the Administrative Organs or organizations concerning trade and commerce conduct cooperative activities in commerce, industry, technology, energy, etc. with the Government, local governments and organs, or organizations of trade partners, the Minister of Commerce, Industry and Energy may provide necessary assistance in accordance with the Presidential Decree.

(2) In order to assist companies to explore foreign markets, the Minister of Commerce, Industry and Energy may provide necessary information for local governments and companies by systematically collecting and analyzing information from the bodies or organizations concerning trade and commerce.

■ Article 9-2 (Designation of General Trading Companies)

(1) The Minister of Commerce, Industry and Energy may designate general trading companies among traders in order to explore overseas markets, diversify trade functions, and support trade activities of small and medium enterprises through allying to small and medium enterprises.

(2) Matters necessary for the standards and procedures of designation under the provisions of paragraph (1) shall be set forth in the Presidential Decree.

(3) When a general trading company designated under the provisions of paragraph (1) fails to satisfy the standards for designation under the provisions of paragraph (2), the Minister of Commerce, Industry and Energy may cancel the designation.

CHAPTER II-2 PROMOTION

OF ELECTRONIC TRADE

■ Article 9-3 (Establishment and Execution of Comprehensive Policy for Promotion of Electronic Trade)

(1) The Minister of Commerce, Industry and Energy shall, in order to promote the electronic trade, establish and execute a comprehensive policy on the electronic trade including the matters falling under any of the following subparagraphs:

1. Fundamental direction of comprehensive policy on electronic trade;
2. Matters concerning the promotion of automatization of trade affairs;
3. Matters concerning the international cooperation related to electronic trade;
4. Plans for collection, analysis and utilization of statistic data on electronic trade;
5. Matters concerning the conciliation of disputes among traders related to electronic trade; and
6. Other necessary matters for the promotion of electronic trade.

(2) The Minister of Commerce, Industry and Energy may, in order to execute a comprehensive policy on electronic trade under paragraph (1), render the necessary assistance to an agency or organization carrying out the business concerning electronic trade.

■ **Article 9-4 (Designation, etc. of Agencies of Electronic Trade)**

(1) The Minister of Commerce, Industry and Energy may, in order to efficiently support and expand the electronic trade by traders, designate the institutions, corporations or organizations satisfying the criteria such as technology capability, which are prescribed by the Presidential Decree as agencies for electronic trade, from among those carrying out the business falling under any of the following subparagraphs, and may render the necessary assistance:

1. Intercession of trade through the network of information and communications, or delivery of documents of electronic trade;
2. Education, publicity and consultation for traders related to electronic trade;
3. Assistance for standardization of electronic trade documents; and
4. Other businesses for the promotion of electronic trade as prescribed by the Presidential Decree.

(2) The application and procedure for the designation of agencies for electronic trade under paragraph (1) and other necessary matters shall be prescribed by the Presidential Decree.

■ **Article 9-5 (Revocation of Designation of Agencies for Electronic Trade)**

The Minister of Commerce, Industry and Energy may, in case those agencies for electronic trade which are designated under Article 9-4 fall under any of the following subparagraphs, revoke such designation: *Provided*, That he shall revoke the designation in any case falling under subparagraph 1:

1. Where said agencies are designated by any fraud or other unjustifiable means; or
2. Where said agencies fail to satisfy the designation criteria under Article 9-4 (1).

CHAPTER III TRANSACTIONS

OF EXPORT OR IMPORT

SECTION 1 Deleted.

■ **Articles 10 through 12 Deleted.**

SECTION 2 General Provisions on

Transactions of Exports or Imports

■ Article 13 (Principles of Export or Import)

(1) Subject to the purpose of this Act, the export and import of goods, etc. and the collection and payment of the price thereof shall be made freely.

(2) A trader shall carry out the transactions concerned in good faith under his or her own responsibility in order to maintain a good order in a free trade system including security of a certain level of overseas credit.

■ Article 14 (Restrictions, etc. on Export and Import)

(1) The Minister of Commerce, Industry and Energy may restrict the export and import of goods, etc., if deemed necessary to perform duties in accordance with the treaties which are concluded and promulgated under the Constitution of the Republic of Korea and the generally accepted international laws and regulations as well as to preserve living resources.

(2) Any person, who intends to export or import goods, etc. as designated by the Minister of Commerce, Industry and Energy in order to perform duties in accordance with treaties concluded and promulgated under the Constitution of the Republic of Korea and the generally accepted international laws and regulations as well as to preserve living resources, shall obtain the approval of the Minister of Trade, Industry and Energy: *Provided*, That this shall not apply to the export and import of goods, etc. satisfying the standards as prescribed by the Presidential Decree, such as goods, etc. the export or import of which is urgent, or other goods the export or import procedures of which need to be simplified.

(3) Any person who intends to change important matters set forth in the Presidential Decree among those approved under the provisions of paragraph (2) shall seek approval of changes from the Minister of Commerce, Industry and Energy, and any other person who intends to change minor matters shall notify the Minister of Commerce, Industry and Energy.

(4) The Minister of Commerce, Industry and Energy may, if deemed necessary, restrict the quantity, price, standard, and export or import area according to each item of goods, etc. which are subject to any approval under paragraphs (1) and (2).

(5) The Minister of Commerce, Industry and Energy shall give public notice of restrictions on or procedures of exports or imports provided for in the provisions of paragraphs (1) through (4).

(6) Any person who obtains an export permission or an export approval under the provisions of Article 21 or 22 shall be deemed to have obtained export approval under the provisions of paragraph (2).

■ Article 15 (Consolidated Public Notice)

(1) In enacting or revising guidelines of exports or imports, the head of the Administrative Organ concerned shall submit the guidelines of exports or imports to the Minister of Commerce, Industry and Energy so that the public notice on the guidelines of exports and imports concerned may be given under the provisions of paragraph (2) before the entry into force of the guidelines.

(2) The Minister of Commerce, Industry and Energy shall give public notice after consolidating such guidelines of exports or imports as submitted under the provisions of paragraph (1).

■ **Article 16 (Recognition, etc. of Specific Form of Transactions)**

(1) The Minister of Commerce, Industry and Energy may recognize any specific form of export or import transactions of goods, etc. as provided by the Presidential Decree, so as to facilitate the export or import of those goods, etc.

(2) Deleted.

(3) If the Minister of Finance and Economy intends to determine the methods of settlement of trade account pursuant to Acts and subordinate statutes related to foreign exchange transactions, he shall, in advance, consult with the Minister of Commerce, Industry and Energy.

■ **Article 17 (Confirmation of Exemption from Export or Import Approval)**

The Minister of Commerce, Industry and Energy shall confirm whether or not goods, etc. exported or imported without approval (limited to goods, etc. falling under the main sentence of Article 14 (2)) fall under those as referred to in the proviso of Article 14 (2).

■ **Article 18 (Establishment of System of Scientific Administration of Trade Affairs)**

(1) The Minister of Commerce, Industry and Energy shall make efforts to establish a system of scientific administration of trade affairs such as electronic data interchange system so that the export and import trade of goods, etc. can be carried out systematically and efficiently.

(2) The Minister of Commerce, Industry and Energy may, if deemed necessary to establish a system of scientific administration of trade affairs under paragraph (1), request the head of the administrative agency concerned to provide information on the export or import trade of goods, etc., such as customs clearance records. In this case, the head of the administrative agency concerned shall comply with such request.

(3) The head of the administrative agency concerned may, if deemed necessary for the enforcement of this Act, make a request for information on the export or import trade of goods, etc. gathered under paragraphs (1) and (2). In this case, the Minister of Commerce, Industry and Energy shall comply with such request.

SECTION 3 Import of Raw Materials or

Equipments for Obtaining Foreign Exchange

■ Article 19 (Approval of Import of Raw Materials or Equipments for Obtaining Foreign Exchange)

(1) The Minister of Commerce, Industry and Energy may choose not to apply the provisions of Article 14 (4) to the import of goods, etc. (hereinafter referred to as the "raw materials or equipments") which are used to obtain foreign exchange, such as raw materials, facilities or equipments: *Provided*, That this shall not apply if deemed necessary to promote the use of raw materials or equipments made in Korea.

(2) The Minister of Commerce, Industry and Energy may determine and publicly announce the categories, items and quantity of raw materials or equipments as referred to in paragraph (1).

(3) A person, who imports raw materials or equipments to obtain foreign exchange or entrusts such importation, shall obtain foreign exchange equivalent to the amount of that importation: *Provided*, That this shall not apply when he or she obtains approval from the Minister of Commerce, Industry and Energy under the provisions of Article 20.

(4) The extent, period and verification method of obtainment of foreign exchange under paragraph (3) and other necessary matters shall be prescribed by the Presidential Decree.

■ Article 20 (Use, etc. of Raw Materials or Equipments for Purposes Other than Those of Obtaining Foreign Exchange)

(1) Where a person who imports raw materials or equipments under Article 19 (1) intends to use the imported raw materials or equipments, or products made of those raw materials or made by those equipments, for purposes other than those for which they have been originally imported, due to any unavoidable cause, he shall obtain approval from the Minister of Commerce, Industry and Energy in accordance with the Presidential Decree: *Provided*, That this shall not apply to raw materials or equipments as prescribed by the Presidential Decree, or products made of such raw materials or made by such equipments.

(2) Where a person intends to transfer raw materials or equipments imported under Article 19 (1), or products made of such raw materials or made by such equipments, to any other person who intends to either use them for any purpose for which they have been originally imported or export them, both persons shall obtain approval from the Minister of Commerce, Industry and Energy: *Provided*, That this shall not apply to such raw materials or equipments as prescribed by the Presidential Decree.

(3) The provisions of Article 19 (3) and (4) shall apply *mutatis mutandis* to a person who, under paragraph (2) of this Article, obtains by transfer raw materials or equipments, or products made of said raw materials or made by said equipments.

SECTION 4 Export or Import of Strategic Goods

■ Article 21 (Export Permission, etc. of Strategic Goods)

(1) The Minister of Commerce, Industry and Energy may, if deemed necessary for the maintenance of international peace and security as well as the national security, impose restrictions on that person who intends to export such goods, etc. as determined and publicly announced by the Minister of Commerce, Industry and Energy (hereinafter referred to as the "strategic goods"), including such export permission as granted by the head of the administrative agency concerned, or issue an import certificate if any other person who intends to import the strategic goods makes an application therefor.

(2) Necessary matters for the restrictions on the export of strategic goods and the issuance of an import certificate thereof under paragraph (1) shall be determined and publicly announced by the Minister of Commerce, Industry and Energy.

(3) The public announcement under paragraph (2) shall include such matters concerning strategic goods as prescribed in the following subparagraphs:

1. Items and standards;
2. Areas where the export is restricted;
3. Procedures for export permission or import certificate issuance; and
4. Other matters concerning the export and import.

SECTION 5 Plant Export

■ Article 22 (Approval, etc. of Plant Export)

(1) When a person intending to export what falls under the following subparagraphs (hereinafter referred to as the "plant export") applies for export approval, the Minister of Commerce, Industry and Energy may approve the plant export in accordance with the Presidential Decree. The same shall also apply to the change of the approved matters:

1. Plant export of not less than a level specified by the Minister of Commerce, Industry and Energy among facilities set forth in the Presidential Decree, and among equipment and installation to be installed to conduct a business of agriculture, forestry, fishing, mining, manufacture, electricity, gas and water supply, transportation, ware-housing, broadcasting and telecommunications; or
2. Exports of plant, technical services, and construction in package (hereinafter referred to as the "turnkey contract exports").

(2) The Minister of Commerce, Industry and Energy shall seek opinions from the head of the Administrative Organ concerned as to the appropriateness of plant exports, when it is deemed to be necessary to decide to approve or approve the change under the provisions of paragraph (1). In this case, the head of the Administrative Organ shall give, without delay, opinions to the Minister of Commerce, Industry and Energy, unless there are justifiable reasons.

(3) The Minister of Commerce, Industry and Energy shall seek in advance the consent of the Minister of Labor and the Minister of Construction and Transportation, when he intends to approve or approve the change of turnkey contract exports. In this case, it is deemed that a report has been made on an offer of overseas employment pursuant to the Employment Security Act when the consent of the Minister of Labor is obtained, and that a report has been made on action plans for overseas construction works pursuant to the Overseas Construction Promotion Act when the consent of the Ministry of Construction and Transportation is obtained.

(4) As to exports of construction services or civil engineering sectors in the form of turnkey contract exports, the Minister of Commerce, Industry and Energy may approve or approve the change only for the contractors performing overseas construction under the Overseas Construction Promotion Act.

(5) When the Minister of Commerce, Industry and Energy approves plant export or its change under the provisions of paragraph (1), the Minister of Commerce, Industry and Energy shall give notice, without delay, to the head of the Administrative Organ concerned.

(6) A person who intends to export plants may organize projects for market research, information exchange, reception of orders, and cooperative undertakings as to such exports. In this case, the Minister of Commerce, Industry and Energy may designate organs or associations concerning plant exports and make them carry out activities for the promotion of those projects.

SECTION 6 Indication of Origin, etc.

■ Article 23 (Indication of Origin of Exported or Imported Goods)

(1) Any person, who intends to export or import the goods, etc. (hereinafter referred to as the "goods requiring the indication of origin") which the Minister of Commerce, Industry and Energy publicly announces to be subject to the indication of origin in order to establish the fair trade order, shall indicate the origin of those goods.

(2) The indication method and confirmation of origin under paragraph (1) and other necessary matters therefor shall be prescribed by the Presidential Decree.

(3) Any trader or seller of goods, etc. shall not take an act falling under any of the following subparagraphs: *Provided*, That the provisions of subparagraph 3 shall apply only to traders:

1. Act of giving any false or misleading indication of origin;
2. Act of damaging or modifying the indication of origin; or
3. Act of not indicating the origin on the goods requiring such indication.

(4) The Minister of Commerce, Industry and Energy may, if deemed necessary to confirm whether or not to violate the provisions of paragraphs (1) through (3), inspect the imported goods, etc. and the relevant documents as prescribed by the Presidential Decree.

(5) The Minister of Commerce, Industry and Energy may, in case any person takes any act of violating the indication method of origin under paragraph (2) or the provisions of paragraph (3), order him to take corrective measures as prescribed by the Presidential Decree, such as restoration, or impose a penalty surcharge not exceeding thirty million won.

(6) The amount of penalty surcharge according to the classification and gravity of violations subject to the imposition of such penalty surcharge under paragraph (5), and other necessary matters shall be prescribed by the Presidential Decree.

(7) In case a person upon whom the penalty surcharge is imposed under paragraph (5) fails to pay it within the period of such payment, the Minister of Commerce, Industry and Energy may collect it by referring to the practices of dispositions on default of national taxes.

■ Article 24 (Ruling etc. on Origin)

(1) The Minister of Commerce, Industry and Energy may, if deemed necessary, rule on the origin of exported or imported goods, etc.

(2) The standards for the ruling of origin shall be determined and publicly announced by the Minister of Commerce, Industry and Energy in accordance with the Presidential Decree.

(3) A trader or a seller of goods, etc. may request the Minister of Commerce, Industry and Energy to rule on the origin of exported or imported goods, etc.

(4) The Minister of Commerce, Industry and Energy shall, if requested under paragraph (3), rule on the origin of the goods, etc. in question and inform the requesting person.

(5) Where a person who is informed under paragraph (4) is dissatisfied with the ruling on the origin, he or she may raise an objection to the Minister of Commerce, Industry and Energy within 30 days after being so informed.

(6) Where an objection is raised under paragraph (5), the Minister of Commerce, Industry and Energy shall announce a decision on the objection within 150 days after the receipt thereof.

(7) Matters necessary for the procedures of ruling on origin, such as the request therefor or the raising of objection, shall be prescribed by the Presidential Decree.

■ Article 25 (Submission of Certificates of Origin of Imported goods)

(1) The Minister of Commerce, Industry and Energy may, if deemed necessary to confirm the origin, have a person who intends to import the goods, etc. submit a certificate of origin which is issued by the Government of a country in which said goods, etc. are produced or shipped.

(2) Necessary matters concerning the submission of a certificate of origin or the confirmation thereof under paragraph (1) shall be prescribed by the Presidential Decree.

CHAPTER IV INVESTIGATION, ETC. OF
INJURY TO INDUSTRY CAUSED BY IMPORT

SECTIONS 1 and 2 Deleted.

■ Articles 26 through 30 Deleted.

SECTION 3 Import Restrictions on Textiles and Clothes

■ Article 31 (Import Restrictions on Textiles and Clothes)

(1) If the increase of import of textiles and clothes causes or is likely to cause any serious damage to the industry of the Republic of Korea which produces the same kind of goods, etc. or directly competitive goods, etc., the Minister of Commerce, Industry and Energy may take safeguard measures (hereinafter referred to as the "safeguard measures") under Article 21 of the Investigation on Unfair Trade Acts and Relief of Industrial Injuries Act.

(2) If safeguard measures are taken under paragraph (1), necessary matters concerning items and countries subject thereto and scope of restriction shall be prescribed by the Presidential Decree.

SECTION 4 Deleted.

■ Articles 32 through 38 Deleted.

CHAPTER V MAINTENANCE OF
GOOD ORDER IN EXPORT OR IMPORT

■ Article 39 (Prohibition of Unfair Acts in Export or Import)

(1) Any person shall neither take acts falling under any of the following subparagraphs nor have other persons do so:

1. Acts falling under any of the following items related to the goods, etc. (hereinafter referred to as the "goods infringing on the intellectual property rights") which infringe on patent rights, utility model rights, design rights, trademark rights, copyrights, copy neighboring rights, program copyright, semiconductor integrated circuit layout-design rights, geographical indications and business secrets protected by Acts and subordinate statutes of the Republic of Korea and treaties to which the Republic of Korea is a party:

(a) Acts of importing the goods infringing on the intellectual property rights or of selling them in the Republic of Korea; or

(b) Acts of exporting the goods infringing on the intellectual property rights or of manufacturing them for the purpose of such export in the Republic of Korea;

2. Acts of exporting or importing the goods, etc. falling under any of the following items:
- (a) Goods, etc. in which the origin is falsely indicated or any other misleading indication is given;
 - (b) Goods, etc. the indication of origin of which is damaged or modified; or
 - (c) Goods subject to the indication of origin in which that indication is not given; and
3. Other acts likely to impede the good export and import order as prescribed by the Presidential Decree.

(2) The Minister of Commerce, Industry and Energy may determine and publicly announce the types and standards of violations under paragraph (1). In this case, he may request opinions of the Trade Committee.

(3) and (4) Deleted.

(5) Where the Minister of Commerce, Industry and Energy deems that traders violate the provisions of paragraph (1) 2 or is recommended by the Trade Committee, he may give orders of corrective measures or impose a penalty surcharge not exceeding thirty million won.

(6) The amount of penalty surcharge according to the category and gravity of violations subject to the imposition thereof under paragraph (5), and other necessary matters shall be prescribed by the Presidential Decree.

(7) The Minister of Commerce, Industry and Energy may collect a penalty surcharge by referring to the practices of dispositions on default of national taxes, unless the penalty surcharge is paid within the period of such payment by a person upon whom it is imposed under paragraph (5).

■ **Article 40 (Prohibition of Price Manipulation of Exported or Imported Goods, etc.)**

Any trader shall not manipulate the import or export price of goods, etc. for the purpose of a flight of foreign currency.

■ **Article 41 (Prompt Settlement of Trade Disputes between Traders)**

(1) Traders shall not delay settling disputes without any justifiable reason, if there occur said disputes related to the export and import of goods, etc. either between them or with those of the trading partners.

(2) When disputes referred to in the provisions of paragraph (1) arise, the Minister of Commerce, Industry and Energy may require that a trader state his views on the settlement of disputes, or submit documents concerning the disputes.

(3) The Minister of Commerce, Industry and Energy may investigate into facts relating to the disputes, when it is deemed to be necessary, after receiving documents or receiving views under the provisions of paragraph (2).

(4) If it is deemed that the rapid and fair settlement of disputes under paragraph (1) is necessary, or there exists an application of the party to the trade disputes, the Minister of Commerce, Industry and Energy may conciliate such disputes in accordance with the Presidential Decree or recommend the conclusion of an arbitration agreement for the settlement of the disputes.

■ Article 42 (Conciliation of Disputes Related to Inspection Prior to Shipment)

(1) An agency (hereinafter referred to as the "preshipment inspection agency") conducting any inspection prior to the shipment of goods, etc., which an enterprise exports by a contract concluded with the Government of an importing country or its delegation, in the Republic of Korea, shall comply with the Agreement on Preshipment Inspection of the World Trade Organization. In this case, the preshipment inspection agency shall not carry out the preshipment inspection in a way to constitute trade barriers against the export of the enterprise.

(2) When disputes between an exporter and a preshipment inspection organ arise as to preshipment inspection, the Minister of Commerce, Industry and Energy may conduct mediation necessary for the settlement of disputes.

(3) In order to administer arbitration as to disputes under the provisions of paragraph (2), an independent arbitral organ may be established in accordance with the Presidential Decree.

■ Article 43 (Adjustment Orders)

(1) In a case falling under any of the following subparagraphs, the Minister of Commerce, Industry and Energy may order traders to adjust the price, quantity, quality, and other transaction terms or areas of exported goods, etc.:

1. Where necessary to conclude or comply with any intergovernmental agreement on trade;
2. Deleted;
3. Where necessary to prevent any act of threatening to disrupt the fair competition in the export of goods, etc. or impairing foreign confidence.

(2) The Minister of Commerce, Industry and Energy may not give an approval under the provisions of Article 14(2) or have the head of the organ concerned cease proceedings for an approval, when he or she orders adjustment under the provisions of paragraph (1), if deemed necessary.

■ Article 44 Deleted.

CHAPTER VII SUPPLEMENTARY PROVISIONS

■ Article 49 (Hearings)

When he or she intends to cancel the designation of a general trading company under the provisions of Article 9-2 (3), the Minister of Commerce, Industry and Energy shall hold hearings.

■ Article 50 (Report and Inspection)

(1) Deleted.

(2) The Minister of Commerce, Industry and Energy may, if deemed necessary for the enforcement of this Act, have public officials under his control inspect books, documents or other materials in offices, places of business, factories or warehouses of such persons as provided in paragraph (1).

(3) An official who conducts inspection under the provisions of paragraph (2) shall present the person concerned his or her certificate showing his authority.

■ Article 51 (Relations between this Act and the Monopoly Regulation and Fair Trade Act)

(1) The Monopoly Regulation and Fair Trade Act shall not apply to the enforcement of adjustment orders given by the Minister of Commerce, Industry and Energy under the provisions of Article 43.

(2) The Minister of Commerce, Industry and Energy shall seek in advance consultation with the Fair Trade Commission when adjustment orders under the provisions of Article 43 are to restrict competition between enterprisers in the domestic market under the provisions of subparagraph 1 of Article 2 of the Monopoly Regulation and Fair Trade Act.

■ Article 52 (Relations between this Act and the National Security Act)

The National Security Act shall not apply to any act of exporting or importing the goods, etc. under this Act, unless that act is not deemed to be unjustifiable within the scope of the conduct of business.

■ Article 53 (Delegation of Authorities)

(1) Some of the authority of the Minister of Commerce, Industry and Energy under this Act may be delegated to the heads of his or her subordinate organs and Mayor/*Do* governors in accordance with the Presidential Decree, or mandated to the head of the Administrative Organ concerned, the head of customs office, the Governor of the Bank of Korea, the President of the Export-Import Bank of Korea, the president of any foreign exchange bank, or other juristic persons or organizations set forth in the Presidential Decree.

(2) The Minister of Commerce, Industry and Energy shall direct or supervise those persons delegated or mandated as to the matters delegated or mandated under the provisions of paragraph (1).

(3) The Minister of Commerce, Industry and Energy may request a delegated or entrusted person to submit necessary materials concerning such duties as delegated or entrusted under paragraph (1).

CHAPTER VIII PENALTIES

■ Article 54 (Penal Provisions)

A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than five years, or by a fine not exceeding the amount equivalent to three times of the price of exported or imported goods, etc.:

1. A person who has violated measures to restrict or prohibit the export or import under any subparagraph of Article 5;
2. A person who has obtained the export permission of strategic materials under Article 21 (1) by any falsehood or other unjustifiable means, or who has exported the strategic materials to an area in which such export is restricted and which is publicly announced by the Minister of Commerce, Industry and Energy under paragraph (2) of the said Article, without obtaining the export permission;
3. A person who has manipulated export or import prices of goods, etc. in violation of the provisions of Article 40; or
4. A person who has violated such adjustment orders as prescribed in Article 43 (1).

■ Article 55 (Penal Provisions)

A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than three years, or by a fine not exceeding thirty million won:

1. Deleted;
2. A person who has exported or imported goods with approval or approval of change under Article 14 (2) or (3), or with the exemption from an approval or an approval of change which are obtained in false or other unlawful ways;
3. A person who has not obtained foreign exchange corresponding to the import under the provisions of the main text of Article 19(3) (including a *mutatis mutandis* application provided for in Article 20(3));

4. A person who has used, without obtaining an approval provided for in the main text of Article 20(1), materials, equipment, or manufactured goods made of the materials or made by the equipment for the purposes other than the original one;

5. A person who has transferred materials, equipment, or manufactured goods made of the materials or made by the equipment without obtaining an approval provided for in the provisions of Article 20(2);

6. A person who has obtained an approval or an approval of changes under the provisions of Article 22 in false or other unlawful ways;

7. A trader or seller of goods, etc. who has violated the provisions of Article 23 (3) 1 or 2;

8. A trader who has failed to indicate the origin on the goods subject to such indication in violation of Article 23 (3) 3;

8-2. A person who has failed to comply with such orders of corrective measures as prescribed in Article 23 (5);

9. A person who has exported or imported the goods, etc. falling under any item of Article 39 (1) 2;

10. A person who has failed to comply with such orders of corrective measures as prescribed in Article 39 (5); or

11. Deleted.

■ Article 56 (Attempted Crimes)

Attempts at such crimes as prescribed in subparagraph 2 of Article 54 or subparagraph 9 of Article 55 shall be punished according to those respective corresponding crime.

■ Article 57 (Negligent Crimes)

Any person who has committed any crime falling under subparagraph 7, 8 or 9 of Article 55 by gross negligence shall be punished by a fine not exceeding twenty million won.

■ Article 58 (Joint Penal Provisions)

When a representative of a juristic person, an agent, employee or other employed person of a juristic person or an individual has committed offences under the provisions of Articles 54 through 57 in respect of business of the juristic person or the individual, the juristic person or the individual shall be punished by a fine under the provisions of respective Articles, as well as the principal offender.

■ Article 59 (Legal Fiction as Public Official in Application of Penal Provisions)

In applying such penal provisions as referred to in the Criminal Act or any other relevant Act, an officer or any other employee of the Bank of Korea, the Export-Import Bank of Korea, a foreign exchange bank or any other juristic person or organization as prescribed by the Presidential Decree, who performs such duties as entrusted by the Minister of Commerce, Industry and Energy under Article 53, shall be deemed to be a public official.

■ **Article 60 (Fine for Negligence)**

(1) A person who falls under any one of the following subparagraphs shall be punished by a fine for negligence not exceeding twenty million won:

1. A person who has not submitted documents in violation of the provisions of Article 41(2);
2. A person who has refused, obstructed, or avoided the investigation of facts under the provisions of Article 41(3);
3. A person who has not reported or has made false reports under the provisions of Article 50(1);
or
4. A person who has refused, obstructed, or avoided the inspection provided for in the provisions of Article 50(2).

(2) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding ten million won:

1. A trader or seller who has imported the goods subject to the indication of origin and has distributed them for the purpose of sale without that indication under Article 23 (1), in trading them after the division, repackaging or simple manufacturing process thereof or doing so in items or pieces;
2. A person who has refused, obstructed, or avoided the inspection under the provisions of Article 23(4); or
3. Deleted.

(3) The Minister of Commerce, Industry and Energy shall impose and collect a fine for negligence under the provisions of paragraphs (1) and (2) in accordance with the Presidential Decree.

(4) A person who objects against the imposition of a fine for negligence under the provisions of paragraph (3) may raise an objection to the Minister of Commerce, Industry and Energy within 30 days after the receipt of the notice on the imposition.

(5) When a person, subject to a fine for negligence under the provisions of paragraph (3), has raised an objection under the provisions of paragraph (4), the Minister of Commerce, Industry and Energy shall give, without delay, notice to a competent court, and the court shall initiate

proceedings with regard to the fine for negligence under the Non-Contentious Case Litigation Procedure Act.

(6) A fine for negligence shall be collected by referring to the cases of disposition for national taxes in arrears, unless the fine for negligence is paid and an objection thereon has been submitted within the period of time under the provisions of paragraph (4).

ADDENDA

■ Article 1 (Enforcement Date)

This Act shall enter into force on March 1, 1997: *Provided*, That the provisions of Articles 13, 14, 16, 17, and subparagraph 2 of Article 55 shall enter into force on January 1, 1997.

■ Article 2 (Time Limit of Application as to Notification of Trade Business, etc.)

The provisions of Articles 10 through 12, and subparagraph 1 of Article 55 shall take effect until December 31, 1999.

■ Article 3 (Examples of Application as to Confirmation Whether to Perform Exports and Imports)

The provisions of Article 17 shall apply to exported or imported goods as approved on and after the entry into force of this Act.

■ Article 4 (Transitional Measures as to Notification of Trade Business)

After this Act takes effect, a person who has been registered by the former provisions of this Act as conducting trade business shall be deemed to have made notification of trade business in accordance with Article 10. In this case, "trade business registration certificate" shall be construed to be a "certificate of notification of trade business".

■ Article 5 (Transitional Measures as to Acting Institutions to Perform Market Research, etc. on Plant Exports)

The Korean Association for the Development of Mechanical Engineering under the Industrial Development Act shall be authorized to perform functions of the administrative bodies or the associations designated by this Act until the administrative bodies or the associations are designated to perform activities to promote projects under Article 22 (6).

■ Article 6 (Transitional Measures as to Penal Provisions)

In relation to acts done before this Act enters into force, the former penal provisions of this Act shall be applied.

■ Article 7 (Special Cases as to Penal Provisions)

Those who fall under subparagraph 1 of Article 55 are punished under subparagraph 1 of Article 55 even after the time limit of its application is over, despite the provisions of Article 2 of this Addenda.

■ **Article 8** Omitted.

■ **Article 9 (Relationship to Other Acts and Subordinate Statutes)**

After this Act takes effect, references to the Foreign Trade Act or to provisions of this Act in other Acts and subordinate statutes shall be construed as those to relevant provisions of this Act in the case of the existence of such provisions.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1998. (Proviso Omitted.)

■ **Article 2** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force two months after the date of its promulgation.

■ **Articles 2 through 8** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: *Provided*, That the amendments to Article 14 (2) shall enter into force on July 1, 1999.

■ **Article 2 (Transitional Measures on Export-Import Associations)**

(1) Export associations, import associations or export-import associations established under the former provisions of Article 45 at the time of entry into force of this Act (hereinafter in this Article referred to as "export-import associations") shall be, in respect of their succession to status, deemed incorporated associations established under Article 32 of the Civil Act where they make reports to the competent authorities through a resolution of their general meeting.

(2) An export-import association which makes a report under Article (1) shall promptly make its dissolution registration and an incorporation registration of the incorporated association deemed to have been established pursuant to paragraph (1).

(3) The property, and rights and duties of former export–import associations in case of paragraph (1) shall be succeeded to by the incorporated associations deemed to have been established pursuant to the said paragraph.

■ **Article 3 (Transitional Measures on Penal Provisions)**

The application of penal provisions to acts committed prior to the entry into force of this Act shall be governed by the former provisions.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

(2) Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

■ **Articles 2 through 10** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 2001.

■ **Articles 2 through 8** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

■ **Article 2** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force three months after the date of its promulgation.

■ **Articles 2 through 7** Omitted.

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