

FOREIGN TRADE

CURRENT SITUATION

The new Foreign Trade Law has been enacted by the Serbian Parliament in May 2009, replacing the law from the year 2005 and providing for the basic legal framework for the foreign trade. Adoption of this law contributes to further harmonization of Serbian rules with the WTO and EU standards. Therefore, any measures are to be applicable and interpreted in line with WTO and EU practice and standards.

There are no major substantial changes. Foreign trade still could be restricted only under the law, business entities enjoy same rights in foreign as in domestic trade, possibility of automatic issuance of the permits for the import, export or transit of the goods has been introduced and terminology has been adjusted to the said international standards. Although certain by-laws for its implementation are already adopted, there are several important issues which should be dealt by new by-laws that are not rendered yet.

The new Act governs:

- entities in foreign trade;
- principles of foreign trade;
- measures that affect foreign trade;
- foreign trade of goods;
- foreign trade of services;
- safety measures;
- other regimes and measures;
- Serbia Investment and Export Promotion Agency.

The application of the Act to foreign trade of arms, military equipment and dual purpose goods has been explicitly excluded.

The significant difference between previous law and the new law lies in the fact that the new act does not stipulate conditions for issuing, utilization and revokal of permits, nor does it stipulate the procedure and terms for application of anti-dumping and compensatory measures. The majority of these issues are left for regulation in by-laws. Most of them have not been enacted and the law does not envisage a deadline for enacting them. Having in mind that by-laws under previous law will be applied until the enactment of new ones, this may cause problems in implementation of the new law.

Another important difference is absence of previously mandatory registration of the direct investments of local entities abroad. Serbian individuals and companies were subject to such obligation in cases of direct investments, changes of company's status affecting shareholding, the date of cessation of business of a company, branch or representative office abroad. Instead of registration, domestic persons have obligation only to notify the competent ministry in case of direct investment and changes of company's status affecting shareholding.

Under previous regulation already established Serbian Investment and Export Promotion Agency had been provided with the more appropriate legal framework, whereby its competence has been regulated in specific manner.

POSITIVE DEVELOPMENTS

The new definition of quantitative restrictions is certainly a positive step, as they now do not presume the prohibition of import or export but merely the limiting of the largest total volume of a certain goods that may be exported or imported within a specified period of time.

The legislator has left the conditions for the issuing, utilization and revokal of permits and the terms for the application of antidumping and compensatory measures to be governed by by-laws. In general this could be deemed positive since it provides for sufficient flexibility with regard to subsequent amendments and supplements to those conditions and procedures which can be later, in the implementation of the law and the by-laws, found to require amendments and supplements. On the other hand, leaving such particularly sensitive issues to be governed by by-laws might enable frequent amendments, and also poses the question of quality of the said solutions in future by-laws. As these by-laws have not yet been enacted, it is impossible to give a definite evaluation at this time.

What certainly is a positive step is the removal of the obligation of local natural and legal entities to register their direct investments abroad at the competent Ministry.

REMAINING ISSUES

Considering the scope of the act and the fact that the most important provisions regarding foreign trade will be governed by by-laws, the law itself does not leave any material issues open. Therefore, the full impact of the new law on foreign trade is to be ascertained upon enactment respective by-laws.

Concerning the above, the fact that the new law does not stipulate a deadline for enacting the appropriate by-laws constitutes a problem which the competent ministries and the Government of the Republic of Serbia should face as soon as possible.

FIC RECOMMENDATIONS

- New by-laws, such are by-law which will regulate the conditions for application of antidumping measures, for application of compensatory duties, for application of measures for protection from excessive imports as well as by-law which will prescribe the conditions for payment in goods and services and for export and import without payment, which need to be enacted as soon as possible, should be in accordance with the rules of the WTO and regulations of the EU as well and should govern all issues of significance to the legal institution they refer to, not regulated by the act itself.