



Title	Foreign Trade Regulation by States : the Case of the Republic of Uzbekistan
Author(s)	Yakubov, Akhtam
Citation	Osaka University Law Review. 2018, 65, p. 107-118
Version Type	VoR
URL	https://hdl.handle.net/11094/67744
rights	
Note	

The University of Osaka Institutional Knowledge Archive : OUKA

<https://ir.library.osaka-u.ac.jp/>

The University of Osaka

Foreign Trade Regulation by States: the Case of the Republic of Uzbekistan

*Akhtam YAKUBOV**

Outline

The present article takes a close look at the concept of foreign trade activities and discusses its role in foreign economic activities. Moreover, the regulation principles, methods, and mechanisms, as well as subjects of foreign trade activities in the Republic of Uzbekistan, along with regulatory practices of foreign trade activities in the Republic, also constitute the main subject matter of the article.

1. International trade policy of the Republic of Uzbekistan

The international trade policy of the Republic of Uzbekistan constitutes a main and inseparable part of the economic policy of the country. Like any other state, the Republic of Uzbekistan regards the support of the country's goods and service importers and exporters, producers and consumers, as well as the guarantee of their activities as one of the most important goals of the Republic.

In accordance with Article 1 of the Law of the Republic of Uzbekistan "On Foreign Economic Activities" that was adopted on May 26, 2000, the main objectives of the Law are composed of maintaining the economic security of the Republic of Uzbekistan when conducting international economic activities, protecting the economic sovereignty and interests of the Republic, providing incentives for the development of the national economy, and creating conditions for the integration of the country's economy into the world economic system¹⁾. The country's main responsibilities in the area of international trade are facilitating the competitiveness of local products in the process of production and delivery of goods in the internal market of the country, ensuring economic stability so that the interests of local producers are not harmed when similar foreign products enter the internal market, as well as assisting local producers when they manufacture goods for export.

* Lecturer of International Private Law, Department at Tashkent State University of Law

1) Reports of Oliy Majlis of the Republic of Uzbekistan, 2000, issue No. 5-6, article 148;

One of the most important priorities that has been put before the Republic of Uzbekistan is the enhancement of the economic capacity of the country by enlarging international economic relations. The development of exports and imports in the country should lead to scientific-technical progress through participation in international trade relations as well as to competition from locally produced goods at international levels coupled with the production of these goods at reasonable prices. However, it is impossible to develop the country's capacity that is aimed at exports without effective facilitation and management of imports. Imports should enable the growth of competition in the local markets of the country as a natural element that determines the strategy of the country's foreign trade activities.

The first days of independence of the economic system, which was called the "Uzbek model" of development, was based on five principles. These were de-ideologization of the economy and its priority over politics, making the state the main reformer, ensuring the rule of law, implementation of strong social policies, and consistency of reforms. These were introduced by the first President of the Republic of Uzbekistan, I. A. Karimov, and were recognized by most countries of the world and were aimed at stage-by-stage diversification of the country's economy and avoiding imports by localizing the production of the most necessary products capable of fulfilling the internal needs of the country. Consequently, a legal system that regulated these processes was created.

Should internal competition within the Republic of Uzbekistan be considered now, it would be impossible to regard the outcomes of the measures that were undertaken to be positive and in some cases the management of activities based on monopolies by some enterprises could be observed. One would see the influence of the country in the conduct of international trade activities in the volume of export-import operations it conducted, its composition, and its geographical allocation.

The Republic of Uzbekistan has been faithfully following international legal rules and principles recognized by civilized nations with the aim of integrating the country's economy into that of the world, as well as observing international agreements, and other rules of customs unions and free economic zones, to which Uzbekistan is a party.

2. Doctrinal principles on regulation of international trade

The participation of the Republic of Uzbekistan in international trade relations within the capacity of the subject of private-legal relationships does not simultaneously limit its function in regulating international trade relations while

not waiving sovereignty or immunity. Doctrinal sources²⁾ provide thirteen principles to be important in regulating international trade activities by the state:

1) The protection of the rights and legal interests of the participants of international trade activities, as well as of producers of goods and services and consumers of the Republic of Uzbekistan;

Pursuant to this principle, one of the most important functions of the state is visible in the guarantee given to the protection of the rights and legal interests of legal and natural persons. In this process, the state protects the rights and legal interests of the participants by guarding against violations of law, restoration of infringed rights, and imposition of obligatory measures upon the perpetrators within the framework of its absolute competence.

In this process, the state performs its present function through its authorized bodies such as courts, law enforcement, and state administrative bodies.

2) The equality of the participants of foreign trade activities and outlawing any kind of mistreatment of them except for cases provided for by law;

The relations of the state with other states are determined in the agreements concluded with the Republic of Uzbekistan, documents of international organizations, and in the ratified documents.

The worsening of diplomatic relations with certain states as well as imposition of sanctions among them leads to the restricted nature of the activities of the participants of foreign trade activities. However, regardless of the level and volume of the relations among states and the condition of activities as strategic partners, the participants of foreign trade activities are equal in the Republic of Uzbekistan and they are prevented from being discriminated against not only by local trade participants, but by any other participants of trade activities.

3) The unity of the customs territory of the Republic of Uzbekistan;

Uzbekistan has an area of 447,400 square kilometers (172,700 sq. mi.) and is divided into 12 regions. There is a single jurisdiction in the territory of the whole country and the laws of the Republic of Uzbekistan are equally applicable in all 12 regions.

Preferences in relation to customs duties and tax privileges are applied to the

2) Khutiz Zaurbech Aslanbievich, Doctor of Economic Sciences, professor, dean of the faculty of Information Systems in Economics and Law FGBOU VPO «Maykop State Technological University», t.: 8(918)4419809; Khutiz Bella Ibragimovna, Candidate of Economic Sciences, assistant professor of the Department of Economics and Management at Edigey State University, t.: 8(918)2210022.

foreign trade activities conducted in free economic zones, which are governed by the law of the Republic of Uzbekistan “On Economic Zones” that was adopted on April 25, 1996.

4) Mutuality when entering in to relations with states or a group of states;

In accordance with this principle, mutually the same privileges and preferences in the international trade regime or retortion are applied when the participants of trade activities of the Republic of Uzbekistan enter into relevant relationship with other countries.

5) Ensuring the exercise and performance of the state’s rights and obligations on the basis of international agreements concluded by the Republic of Uzbekistan;

The Republic of Uzbekistan ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and recognizes and enforces the judgments made by the courts on disputes arising from agreements concluded by the Republic. Moreover, the enforcement of the decisions of government authorities and state management bodies, as well as that of the courts is ensured.

6) The selection of the regulatory measures aimed at regulating international trade activities by the state and ensuring the effectiveness of the regulations as well as the selection of measures that are not onerous to the participants of foreign trade activities;

The organization and regulation of foreign trade activities in the Republic of Uzbekistan are implemented by the Ministry of Foreign Trade of the Republic of Uzbekistan, the State Committee on Investments, and other authorized bodies.

Foreign trade activities are not only regulated by authorized state bodies, but also by the Chamber of Commerce and other such non-governmental organizations, which are based on the voluntary union of subjects of foreign trade activities, and this type of regulation can be regarded as the non-state regulation of foreign trade activities. According to this principle, the state regardless of the regulation being state or non-state, supports the convenient and effective regulation of the relationships of the subjects depending on each individual case.

7) Transparency of procedure of adopting and applying measures concerning the regulation of foreign trade activities;

Where a norm is adopted that regulates foreign trade activities, the draft of the proposed normative document will go through a regulatory impact analysis procedure and will be placed at regulation.gov.uz for public discussion. Moreover, when legal opinions are sought on drafts of different normative-legal documents, the subjects of foreign trade activities will also be invited to express their opinions on these drafts of legal documents. Consequently, the subjects of foreign trade

activities will become directly involved in the law-making process.

8) Impartiality and justified nature of regulative measures implemented by the state in the sphere of international trade;

The regulation measures of foreign trade activities should not serve for the interests of certain groups or lawyers; moreover, they should not create additional bureaucracy or artificial barriers. Instead, the regulation measures should aim for positive outcomes.

9) Outlawing unjustified interference by the state or its bodies as well as harm caused to the economy of the Republic of Uzbekistan and to the participants of international trade activities;

The duty of public authorities and governing bodies is not to limit activities or to impede participants in trade activities, but to assist them in creating favorable conditions for them. The activities of participants in foreign trade activities cannot be obstructed or interrupted without the authorization of the State Tax Committee, the Ministry of Foreign Affairs of the Republic of Uzbekistan, and other similar authorities or law enforcement bodies. People liable for the violation of this provision will be imposed with disciplinary, administrative, or criminal sanctions.

10) Maintenance of the state's defense capabilities and state security;

If there is any probability of harming the defense capabilities of the state and state security by conducting certain foreign trade activities, the conducting of relevant activities will not be allowed.

11) Ensuring the exercise of the right of complaint by the participant of international trade activities, whose rights have been violated by state bodies, officials, or by normative-legal documents adopted in the country, during the pursuance of trade activities;

Article 44 of the Constitution of the Republic of Uzbekistan stipulates that "everyone shall be entitled to legally defend his/her rights and freedoms, and shall have the right to appeal any unlawful action of state bodies, officials and public associations." This rule is applicable to the participants of foreign trade activities, who can submit complaints about the injustice done to them or violations of law as well as apply to the court with the aim of restoring their infringed rights. Moreover, the participants are entitled to request interpretations and clarifications of the normative-legal documents related to the foreign trade activities to be provided by the body, which has adopted the relevant documents, or by the Constitutional Court of the Republic of Uzbekistan.

12) Unity of the system of state regulation in the sphere of international trade;

The state regulation of activities by subjects participating in foreign trade

activities on behalf of the state and the activities of subjects in the form of private enterprises is performed by the same authorized bodies.

13) Application of a single method of state regulation in the sphere of international trade in the whole territory of the Republic of Uzbekistan;

Even though khomiyats, i.e., municipal governing bodies, in the regions participate in the regulation of foreign trade activities, they are bound by specific rules established in the Republic of Uzbekistan when organizing their own activities. No differences are allowed in the practice of regulation of foreign trade activities when they are administered by municipal governing bodies.

One has to differentiate between how foreign trade activities are conducted from their regulation and management. For instance, Article 1 of the Law of the Russian Federation “On the Basis of State Regulation of Foreign Trade Activities” identifies the basis of the regulation of foreign trade activities as well as determines the competence of the Russian Federation and its subjects in the conduct of foreign trade activities³⁾.

The regulation and governance of foreign trade activities in the Russian Federation are organized according to this in the form of a complex structure containing such levels as state, local, and regional⁴⁾. Governance at the state level is executed by the head of the state, i.e., the President of the Russian Federation, government, and the federal assembly.

In accordance with the Decree by the President of the Republic of Uzbekistan, No. PF-5012, dated April 13, 2017 “On Measures of Further Improvement of the Management System in the Sphere of Foreign Trade”, the Ministry of Foreign Economic Relations, Investment, and Trade was reorganized as the Ministry of Foreign Trade.

The Ministry of Foreign Trade of the Republic of Uzbekistan is responsible for the development and implementation of state policy in the sphere of foreign trade in the capacity of an authorized state body. Moreover, the Ministry ensures consistency in the work of state that governs bodies in the sphere of regulating

3) Federal Law of the Russian Federation No.164-FZ “On the Basis of State Regulation of Foreign Trade Activities” dated December 8, 2003, available on the legal database “Garant.”

4) Khutiz Zaurbech Aslanbievich, Doctor of Economic Sciences, Professor, Dean of the Faculty of Information Systems in Economics and Law FGBOU VPO «Maykop State Technological University», t.: 8(918)4419809; Khutiz Bella Ibragimovna, Candidate of Economic Sciences, Assistant Professor of the Department of Economics and Management at Edigey State University, t.: 8(918)2210022.

foreign trade activities. In accordance with this Decree, the development and implementation of a unitary state policy in the sphere of foreign trade activities have been determined to be one of the most important responsibilities of the Ministry⁵).

Being distinct from the practices of most countries, the governance of foreign trade activities at the level of ministries, but not at the level of the heads of state and government has served to prove the liberalization of the present sphere to the maximum possible extent and the stage-by-stage elimination of state interference into the present sphere.

3. Regulation on the parties of international trade

Legal entities registered in the Republic of Uzbekistan, permanent residents, and individuals registered as sole proprietors are entitled to conduct international economic activities according to Subsections 2–3 of Article 3 of the Law “On International Trade Activities”.

It offers provisions that the state bodies of the Republic of Uzbekistan are entitled to conduct international trade activities, if not otherwise provided for in normative-legal documents⁶). However, Article 5 of the Law does not stipulate any requirements that are imposed so that the subjects of international trade activities are recognized despite the recognition of legal and natural persons involved in conducting such activities as subjects of international economic activities.

Foreign trade activities constitute one of the directions of international economic activities, which cannot be conducted by anyone, but only by those having the status of a subject. The participants of international trade relations are particularly required to be duly registered by the state for them to be able to enter into international trade relations in foreign states.

Activities aimed at earning profit and based on risk-taking activities on the basis of the property of the entrepreneur are understood to be entrepreneurship pursuant to the legislation of the Republic of Uzbekistan.

Entrepreneurial activity (entrepreneurship) is defined in Article 3 of the Law on the Republic of Uzbekistan “On Guarantees of Freedom of Entrepreneurial Activity” dated May 25, 2000 as the initiative activity pursued by subjects of entrepreneurial activities in accordance with the law, which is based on risk-taking

5) http://lex.uz/pages/getpage.aspx?guid=86&lact_id=3165212

6) Reports by Oliy Majlis of the Republic of Uzbekistan, 2000, *Issue Nos. 5–6, Article 148*;

behavior and profit making under personal liability⁷⁾.

Article 40 of the Civil Code of the Republic of Uzbekistan identifies the types of legal persons as those who conduct activities to earn profits (commercial entities) and those not aimed at earning profits (non-commercial entities).

Legal enterprise–traders can be established in the form of a company or society, production cooperative, unitary enterprise, and in any other form provided for by the law. Non-trading legal enterprises can be established in the form of public associations, social funds, and in the form of enterprises financed by the proprietor as well as in any form provided for by the law⁸⁾.

Therefore, any legal person or sole proprietor can conduct international economic activities, but international trade activities can only be conducted by legal enterprises and natural persons, who have been duly registered by the state.

The main reason for that is the ability of subjects entering into mutual relationships to conclude mutually beneficial agreements and contracts in international economic activities, which result in the purchase of goods (work and services) for their own needs (for personal or household use). However, the participants will aim for entrepreneurship (earning profits) in the subject matter of the relevant agreement in international trade activities.

4. Mechanisms for state regulation of international trade activities

Four mechanisms for state regulation of international trade activities are promoted by scholars in doctrinal sources⁹⁾:

1) Customs-tariff regulations (regulation mechanisms for international trade through the application of customs duties to imported and exported goods);

2) Non-tariff regulations (regulation mechanisms for international trade through the implementation of restrictions to goods depending on their quantity or other economic characteristics);

3) Regulation of international trade through the implementation of bans and restrictions to the results of services and intellectual activities;

4) Undertaking of measures of an economic and administrative nature serving the development of international trade activities.

The present mechanisms are widely employed in the practice of developed

7) Reports by Oliy Majlis of the Republic of Uzbekistan, 2011, *Issue No. 37, Article 374*;

8) The Civil Code of the Republic of Uzbekistan. Tashkent: Adolat. 2016.

9) Smirnov, A.E. *Handbook on International Trade Law*. – Vilnius.: E GU, 2007. –p. 47.
Popondopulo V.F. *International Trade Law: Textbook*. – M.:Omega-L, 2005. –p. 472.

countries (i.e., the Russian Federation) within the framework of Commonwealth of Independent States(CIS) countries and they are in full conformity with generally accepted requirements. Regardless of this, economic measures aimed at regulating international trade activities do not always result in positive outcomes from one side, or from other sides, and they do not equally influence large and small enterprises due to their unequal bargaining power.

Due to this, there is a need in a number of countries to apply administrative measures in addition to economic ones when regulating the sphere of international trade. In cases when exports and imports are directly limited, the likelihood of a deficit in locally produced goods in the internal market or too much availability of imported goods is avoided.

The development of administrative measures regulating international trade activities is presently being persistently undertaken in international practice.

As a rule, non-tariff regulation of international trade is employed to protect the country's national economy in exceptional circumstances as well as to conform to international obligations.

Such a practice of international experience can be observed in the Republic of Uzbekistan as well. The licensing rules of the import of goods are directly related to the membership negotiations of Uzbekistan that have been conducted with the World Trade Organization (WTO). One of the primary rules for membership of the WTO is intended for the tariff regulations of international trade instead of non-tariff regulations.

In such cases, the imports and exports of goods are conducted without any quantity limitations. Limitations on imports and exports based on quantity apply to the administrative mechanism employed in the non-tariff regulations of goods circulation, which itself applies to the import or export of goods strictly in accordance with the list or quantity. This is mostly observed in the quotas of non-tariff regulations. The imposition of quantity restrictions by the state during a specified period of time to certain types of imported or exported goods can be cited as an example.

5. Liberalization of international trade in the Republic of Uzbekistan

The registration procedure for import contracts in customs authorities was abolished starting from January 1, 2013 according to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan "On Additional Measures to Liberalize the Procedures of Foreign Trade Operations Implementation", which was dated December 30, 2013, to liberalize international trade, diminish practices of

administrative control over export-import transactions, as well as develop mechanisms for foreign trade¹⁰).

The registration of import contracts in the Ministry of Foreign Economic Relations, Investments, and Trade of the Republic of Uzbekistan was annulled.

Examination procedures toward contracts concluded by legal entities, financed by governmental budget resources or by credits (debts) attracted from the Government of the Republic of Uzbekistan or provided under its guarantees, those in a charter capital of which the government owned more than a 50% share, and entities not funded by their own currency assets, were be applied by the Ministry of Foreign Economic Relations, Investments, and Trade. The system of customs monitoring import contracts in the Republic of Uzbekistan was introduced from this date.

Under Shavkat Mirziyoev's Presidential Decree "On Measures for Further Improvement of the Regulating System in the Field of Foreign Trade" № PF-5012 dated April 13, 2017, the Ministry of Foreign Economic Relations, Investments, and Trade of Uzbekistan was reorganized into the Ministry for Foreign Trade of Uzbekistan¹¹).

This decree was adopted in order "to improve foreign trade relations effectiveness, liberalize the foreign trade, strengthen the exportability, further improve the expatriation system of competitive local products and establish long-term stable commercial relationships between local manufacturing companies and their foreign partners".

Being a competent governing body, the Ministry for Foreign Trade of Uzbekistan is considered to be responsible for the development and execution of the country's foreign trade policy and coordinates the work of governmental bodies in the regulation of foreign trade activities.

On November 3, 2017 the President of Uzbekistan signed a Decree "On regulative measures for the export and import of specialty goods as well as the export contracts registration and import contracts examination" and a Resolution "On further liberalization of foreign trade activities and support of commercial entities".

Licensing of the export and import of specialty goods according to the decree is based on the resolutions of the President or the Cabinet of Ministers of

10) Collection of the Legal Documents of the Republic of Uzbekistan, 2013, issue No. 2, Article 24; 2015, issue No. 42, Article 534)

11) http://lex.uz/pages/getpage.aspx?guid=81&lact_id=3165212

Uzbekistan and is carried out by the Information and Analytical Department on issues of development of foreign trade activities, economic networks, and exportability of the regions of the republic of the Cabinet of Ministers. Jewelry, precious metals, gems and their products were excluded from the list of products to be licensed.

Business entities are allowed to export their goods (excluding specialty goods), work, and services, based on invoices of 100% prepayment transfer to their export accounts in Uzbek banks from December 1 without concluding export contracts.

Commercial entities are directly liable for the arrears related to the delay of foreign trade operations.

The responsibility measures that are applied in relation to the exporters responsible for the debt related to not meeting the expiry date of export operations will be applied in relation to the importers who allowed the debt to arise related to not meeting the expiry date of import operations.

In case of unforeseen circumstances (force majeure), the term of the transfer of foreign currency payment can be extended for the duration of the unforeseen circumstances after its confirmation by the competent authority of the state in which force majeure has occurred.

When the amount of insurance coverage (in national and/or foreign currency) on the insurance policy of the export contract is transferred to the account of the exporter of goods, work, and services, the amount of debt related to this export contract is reduced by the amount of insurance coverage for financial sanctions to be applied.

When customs payments privileges are applied, the obligations of importers to make export customs declarations aimed at confirming the customs value of goods imported into the customs territory of the Republic of Uzbekistan are canceled.

The requirement to issue a permit by the state customs authorities for the re-exportation of goods under the “temporary import” customs procedure is also canceled.¹²⁾

6. Concluding remarks

It can therefore be concluded that:

First, individuals or legal persons cannot be regarded as the subjects of

12) <https://www.gazeta.uz/uz/2017/11/07/export/>

international trade relations, but only those persons (sole proprietors), who have registered themselves in the established order or are legal persons involved in trade.

Second, the step-by-step liberalization of international trade will considerably contribute to the attainment of positive results in the area.

Third, regulation of international trade through customs tariffs is more preferable to non-tariff regulations by the state, which should be abandoned for the benefit of the former.