

LAW NO. 2002/6

LAW ON EXTERNAL TRADE ACTIVITY

The Assembly of Kosovo,

Taking into account UNMIK Regulation No. 1999/1 of 25 July 1999, "On the Authority of the Interim Administration in Kosovo," as amended; and UNMIK Regulation No. 1999/24 of 12 December 1999, "On the Law Applicable in Kosovo," as amended; and

On the basis of the authority granted by United Nations Interim Administration on Kosovo (UNMIK) Regulation No. 2001/9 of 15 May 2001, "On a Constitutional Framework for Provisional Self-Government in Kosovo," especially Sections 5.1(d), 5.7, 9.1.1, 9.1.26(a), 9.3.3, and 11.2 thereof;

Recognizing that the present law shall be without prejudice to the rights and privileges of UNMIK and KFOR necessary for the fulfillment of their mandate under United Nations Security Resolution 1244 (1999);

Reaffirming that the terms set out in Section 2 of the present law and the derivatives thereof shall be interpreted in a manner consistent with United Nations Security Council Resolution 1244 (1999);

For the purpose of promoting the development of a sound market economy in Kosovo by ensuring that the substance of the rules and regulations affecting trade and commerce between Kosovo and areas outside Kosovo are developed and implemented in a manner that is consistent with best international practices and the requirements of the World Trade Organization and the European Union,

Hereby adopts the following law:

CHAPTER 1

GENERAL PROVISIONS

Section 1

Purpose, Application and Scope

1.1 The purpose of the present law is to ensure that the rules regulating the conduct of trade and commercial activity between Kosovo and areas outside Kosovo are consistent with best international practices and the requirements of World Trade Organization and the European Union.

1.2 The present law shall apply to all public authorities and public enterprises as well as to juridical persons and undertakings and persons engaged in trade and commercial activity within, or having economic effects within, the territory of Kosovo.

Section 2

Definitions

Whenever used in the present law, each of the following terms shall have the indicated meaning unless the context within which such term appears clearly intends another meaning.

“Activity license” shall mean a license, issued by the concerned licensing authority, authorizing the holder of such license to engage, in accordance with the conditions specified therein, in a specific type of business or other activity.

“Counterfeit trademark goods” shall mean goods that, without proper authorization, bear a trademark identical or highly similar to a trademark that has been validly registered in the EU or an EU member state.

“Place of destination” shall mean the foreign state or other external area where the concerned goods are to be used, worked upon, transformed or processed; should there be insufficient basis for determining this, the country of destination shall be deemed to be the last foreign state or external area into which it is known that the concerned goods will be brought.

“Customs legislation in Kosovo” shall mean legislation having as its principal subject matter the establishment of customs tariff rates, the assessment of customs duties, or the procedures and rules governing other standard customs matters.

“EU” shall mean the European Union.

“Export” or *“Exportation”* shall mean the moving or delivery of goods out of the territory of Kosovo and into an external area.

“Exporter” shall mean the physical person or undertaking effecting, or causing another to effect, an exportation. In the event the exportation is required in order to fulfill an agreement between a resident and a non-resident covering the acquisition or purchase of goods, then only the resident shall be deemed the exporter. A physical person or undertaking that acts only as a carrier, transporter or forwarder of goods shall not be deemed as the exporter of those goods.

“Export permit” shall mean a permit, issued by the concerned permitting authority, authorizing the recipient to perform, in accordance with the conditions specified therein, certain specified export activities.

“External area” shall mean any area outside the territory of Kosovo.

“External trade activity” shall include trade, commerce, contracts, transactions and other activities involving the movement of goods, other tangible property, intangible assets, intangible property rights, and services between an external area and the territory of Kosovo.

“Foreign state” shall mean (i) any state or separate foreign customs territory, and (ii) any territorial or political subdivision of such a state or separate foreign customs territory.

“*Gold*” refers to refined gold and gold alloys in bullion or semi-processed or semi-fabricated form, and to gold coins that do not have a recognized and significant collector’s value.

“*Goods*” refers to movable tangible property, articles and chattels, and electric power, but not to securities, commercial paper or cash (bills and coins, gold); provided, however, that bills and coins having a significant and recognized collector’s value shall qualify as “goods.”

“*Government*” shall mean the Government specified in Section 1.5(c) of UNMIK Regulation No. 2001/9 of 15 May 2001, “On a Constitutional Framework for Provisional Self-Government of Kosovo,” and any successor public executive authority.

“*Import*” or “*Importation*” refers to the moving or delivery of a good out of an external area and into the territory of Kosovo. The moving or delivery of a good out of a customs free zone, a free trade zone or customs traffic and into the normal commerce of Kosovo shall constitute an importation if such good had previously been moved or delivered out of an external area into such customs free zone, free trade zone or customs traffic.

“*Importer*” refers to a physical person or undertaking effecting or causing another to effect an importation. In the event that the importation is required in order to fulfill an agreement between a resident and a non-resident covering the acquisition or purchase of goods, then only the resident shall be deemed the importer. A physical person or undertaking that acts only acts as a carrier, transporter or forwarder of goods shall not be deemed as the importer of those goods.

“*Import Permit*” shall mean a permit, issued by the concerned Permitting Authority, authorizing the recipient to perform, in accordance with the conditions specified therein, certain specified import activities.

“*Licensing Authority*” shall mean a public authority designated in the present law or any other normative act as having the authority or responsibility for issuing an Activity License.

“*MTI*” shall mean the Ministry of Trade and Industry and any successor public authority thereto.

“*Resident*” shall mean and include any of the following:

- a. A physical person who is a resident, or has a permanent residence in the territory of Kosovo;
- b. An undertaking, other than a branch or office of an undertaking, if such undertaking (i) has been established under and registered in accordance with the applicable normative acts of Kosovo, and (ii) maintains its headquarters, principal place of business, books and records in the Territory of Kosovo; and

- c. A branch or office of an undertaking, regardless of whether such undertaking is a resident or non-resident, if (i) such branch or office has been established under and registered in accordance with the applicable normative acts of Kosovo, (ii) the day-to-day administration and management of such branch or office is actually performed at its registered address in Kosovo, and (iii) separate books and records on the operations of such a branch or office are maintained at such address.

“*Nonresident*” shall mean and include any of the following:

- a. A physical person who is neither domiciled nor usually resident in Kosovo;
- b. An undertaking that does not meet the requirements specified in paragraph “b” under the definition of “resident.”
- c. A branch or representative office of a resident undertaking if such branch or representative office is located in an external area or otherwise does not meet the requirements specified in paragraph “c” under the definition of “resident.”

“*Normative act*” shall mean (i) any law, decree, resolution, normative act, sub-normative act, regulation, administrative direction, instruction, rule, ordinance, or other act that is recognized or represented as having normative force within the territory of Kosovo by any public authority, and (ii) any international agreement that international law considers binding upon Kosovo.

“*Permitting authority*” shall mean a public authority designated in the present law or any other normative act as having the authority or responsibility for issuing an Import Permit or Export Permit.

“*Pirated copyright goods*” shall mean goods that contain or carry copyrighted material without the authorization of the owner of such copyrighted material if the sale or manufacture of such goods in an EU member state would violate a copyright law or a law establishing a related right.

“*Product standard*” within the meaning of Section 14 means any document (i) that has been issued or approved by a recognized standard setting body, (ii) that establishes - for common and repeated use - rules, guidelines or characteristics for products or related processes and production methods; including rules, guidelines or characteristics regarding terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method, and (iii) with which compliance is neither required nor mandated by a normative act or public authority.

“Public authority” shall mean any executive authority, public body, ministry, department, agency, or other authority that exercises, pursuant to any normative act, executive, legislative, regulatory, administrative or judicial authority or power. The term “public authority” shall also include any quasi-public or otherwise private organization to the extent that such organization exercises any such authority or power pursuant to a grant of authority under a normative or sub-normative act or pursuant to a delegation of authority from a public authority.

“Public enterprise” shall mean a public authority or an undertaking owned or controlled by a public authority, to the extent such public authority or undertaking is engaged in the conduct of commercial, business or economic activity within, or having effects within, the territory of Kosovo.

“Quota” shall mean a quota, tariff-quota or other numerical, quantitative or value-based limitation or restriction imposed on any type of external trade activity. “Quota” shall include any other measure that may reasonably be expected to lead to or have the effect of such a limitation or restriction.

“Restrictive measure” shall mean a restriction, prohibition, requirement or measure described in Section 3, paragraph 1, of the present law.

“Special trade measures” shall mean the antidumping, countervailing and safeguard measures authorized under Chapter 4, Part 4, of the present law.

“Technical regulation” within the meaning of Section 13 shall mean a normative act, including the applicable implementation provisions thereof, establishing mandatory criteria that a specific type or class of goods, regardless of origin, must comply with, including - but not limited to - requirements regarding product characteristics, technical specifications, terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process and production method.

“Transit” refers to the transportation of goods from an external area through the territory of Kosovo to an external area without such goods entering the normal commerce of Kosovo.

“Undertaking” shall mean any legal entity, business organization, partnership, joint venture, enterprise, public enterprise, association, project, branch, office, or other organization or establishment.

“WTO” shall mean the World Trade Organization.

CHAPTER 2

BASIC RULES FOR EXTERNAL TRADE ACTIVITY

Section 3

Basic Principle of Free Trade and Commerce

3.1 Except where the present law specifically requires or allows otherwise, a public authority or normative act may not impose a restriction, prohibition or requirement on

any external trade activity or impairing or placing a condition on the ability or right of any resident or non-resident to engage in or perform any external trade activity. Nor, except where the present law specifically requires or allows otherwise, may any public authority or normative act impose any other measure having the effect of such a restriction, prohibition or requirement.

Section 4

General Limitations on Restrictive Measures

4.1 If a provision of the present law specifically requires or authorizes the imposition of a restrictive measure that would otherwise be contrary to Section 3, the Government shall or may, as appropriate, issue a normative act establishing such restrictive measure; provided, however, that each such restrictive measure so established must comply with all of the following criteria:

- (a) It must be clearly authorized by and consistent with the concerned provision of the present law;
- (b) It must be clearly related to and clearly necessary for the achievement of the purpose specified in such provision;
- (c) Its type and scope must be limited to the minimum necessary to achieve such purpose;
- (d) Its implementation shall be done in the manner that creates the least possible interference with and imposes the least possible burden on external trade activity and the general freedom of economic activity;
- (e) It shall not be contrary to any international agreement that is binding on Kosovo;
- (f) It shall be consistent with the mandatory requirements of the agreements of the WTO; and
- (g) It shall be, as far as possible, in harmony with any other criteria applicable in the EU to such a restrictive measure.

4.2 If a proposed restrictive measure has an appreciable potential to materially affect external relations, the Government shall notify UNMIK of the Government's activities related to the development of subsidiary normative acts establishing restrictive measures.

4.3 A restrictive measure may not negatively affect the performance of a contractual obligation existing at the time such restrictive measure is adopted unless the achievement of the public purpose of such restrictive measure would be more than insignificantly jeopardized by the unaffected performance of such obligation.

4.4 A restrictive measure shall be repealed, or the applicable scope thereof reduced, as and insofar as the reasons justifying its existence or scope of application cease to exist or otherwise become irrelevant.

4.5 If a restrictive measure, or the method of its implementation, has any discriminatory, anti-competitive or trade-restrictive element or effect that is not clearly and substantially necessary for the achievement of the purpose of the concerned provision of the present law, such measure and/or its method of implementation shall be either voidable or, if practicable, narrowly interpreted and applied in a manner that eliminates or reduces to a negligible minimum such unrelated or unnecessary discriminatory, anti-competitive or trade-restrictive element or effect.

4.6 All restrictive measures shall be developed and published in a fully transparent manner.

4.7 If a subsidiary normative act issued under the authority of the present law requires enforcement at the border in order to be effective, the Government shall forward such subsidiary normative acts to the UNMIK Customs Service together with a request that the UNMIK Customs Service take the appropriate steps to enforce such subsidiary normative act.

Section 5

Authority to Implement Restrictive Measures

5.1 The MTI shall be the only public authority having the authority to implement a restrictive measure.

5.2 If the MTI lacks appropriately trained personnel or technical capacity to prepare or implement a particular type of restrictive measure, the Government shall, delegate all or any part of the authority to implement such a restrictive measure to another public authority; however the MTI shall ensure that such activities are conducted in full compliance with the present law and any applicable normative act or acts.

5.3 The Government shall ensure that the MTI and other public authorities that have a legitimate and obvious interest in the preparation and implementation of a restrictive measure cooperate with respect to the preparation of the procedures, criteria and mechanisms required for the appropriate implementation thereof. However, the MTI shall be responsible for ensuring that such activities are conducted in full compliance with the present law and any other normative act or acts.

5.4 The MTI shall ensure that the preparation and implementation of all restrictive measures are conducted in a coordinated and efficient manner that is free of redundant or duplicative requirements or procedures.

5.5 The MTI shall establish and maintain a public information office, which shall be open to any physical person during normal business hours Monday through Friday, that maintains a well-ordered collection of copies of the present law, all normative acts issued pursuant to the present law, all restrictive measures, and all rules, regulations, procedures, requirements and criteria relating to the implementation of the present law, such normative acts and such restrictive measures. The MTI shall also establish and maintain a well-ordered and use-friendly internet web-site via which any person may obtain electronic copies of the afore-described documents.

Section 6

General Rules Relating to Import and Export Permits

6.1 If a provision of the present law or a normative act issued pursuant to the present law stipulates that an import permit or an export permit is required for the execution or performance of an import or export transaction or activity, the concerned permitting authority shall, except as provided in paragraph 2 below, issue the requested permit to the concerned applicants.

6.2 The concerned permitting authority may deny the application for the required import permit or export permit only if (i) a specific provision of the present law or the concerned normative act requires such denial or (ii) the concerned permitting authority articulates in writing clear and compelling reasons demonstrating that the issuance of the requested permit to the concerned applicant would materially jeopardize the purpose of the provision establishing the permit requirement.

6.3 In the event a permitting authority denies an application for an import permit or an export permit, the permitting authority must provide the concerned applicant with a detailed written statement of the legal bases and reasons for such denial.

6.4 A normative act issued pursuant to the present law may, to the extent authorized by the present law, make the granting of an export permit or import permit contingent upon the concerned applicant's ability to meet certain criteria specified in such normative act; provided, however, that all such criteria shall be transparent and clearly and substantially necessary for the fulfillment of the public purpose underlying the concerned export permit or import permit requirement.

6.5 Within thirty (30) days of the date of the permitting authority's denial of an application for an import permit or an export permit, the concerned applicant may file a request for reconsideration with the permitting authority. The permitting authority shall provide the concerned applicant with written confirmation of the time and date of its receipt of the request for reconsideration."

The permitting authority shall make its decision with respect to a request for reconsideration of its denial of an application for an import permit or an export permit within thirty (30) days of the receipt of the request for reconsideration. In the event a permitting authority denies a request for reconsideration of an application for an import permit or an export permit, the permitting authority must provide the concerned applicant with a detailed written statement of the legal bases and reasons for such denial."

Within thirty (30) days from the date of the permitting authority's denial of a request for reconsideration under Section 6.3 of this law, the concerned applicant may file a request the MTI for a review the decision of the permitting authority. The MTI shall provide the applicant with written confirmation of the time and date of its receipt of the request for reconsideration. This Section 6.4 shall not apply in those situations where the permitting authority is also the MTI."

The MTI shall make its decision with respect to a request for reconsideration of the permitting authority's decision under Section 6.3 within thirty (30) days of the receipt of the request for reconsideration. In the event the MTI denies a request for reconsideration of the permitting authorities decision, the MTI must provide the

concerned applicant with a detailed written statement of the legal bases and reasons for such denial.”

The decision the MTI under Sections 6.4 or 6.5 above, shall be subject to judicial review under applicable law.

6.6 No person or undertaking that is authorized by an import permit or export permit to import or export goods shall transfer the permit or allow it to be used by any other person or undertaking.

Section 7

Prohibition on Quotas; Quotas Disfavored; Allocation of Quotas

7.1 Except as specifically and explicitly authorized by a provision of the present law or a provision of a normative act that is specifically and explicitly authorized by the present law, no public authority or normative act may establish, implement or allocate any quota on any type of external trade activity.

7.2 Even if such a provision specifically and explicitly authorizes the establishment, implementation or allocation of a quota that would otherwise be contrary to paragraph 7.1, no such quota shall be established or implemented if, under the concerned circumstances, it is reasonably practicable to achieve the purpose thereof through the imposition of such additional duties as are reasonably calculated to achieve a level of protection equivalent to such quota.

7.3 If, in accordance with the present law, a normative act establishes an import or export quota, or allocates Kosovo’s share of an import or export quota established by another government, and an import permit or export permit requirement is established in connection with the implementation or allocation of such quota, the concerned permitting authority shall allocate such permits among all qualified applicants on the basis of objective, rational, and transparent criteria. Such criteria may not be established or implemented for, or in the furtherance of, any discriminatory or anti-competitive purpose. Any qualifications that an applicant must meet to qualify for such a permit shall also be objective, rational and transparent and not established or implemented for, or in the furtherance of, any discriminatory or anti-competitive purpose.

7.4 No person or undertaking that has been issued an import or export quota allocation or a permit representing such an allocation shall transfer it or allow it to be used by another person or undertaking.

Section 8

No Impairment of Customs Legislation

8.1 No provision of the present law shall be interpreted as affecting the customs legislation of Kosovo.

8.2 A permit, certificate or other authorization issued or granted pursuant to the present law or a normative act issued pursuant to the present law shall not affect the

obligation of any person or undertaking to pay any tax, duty, toll, impost or other sum required to be paid in respect of the exportation or importation of goods.

CHAPTER 3

GENERAL BASES FOR RESTRICTING EXTERNAL TRADE ACTIVITY

Section 9

Implementation of International Agreements

9.1 If Kosovo is obligated to implement a provision of an international agreement that clearly requires the imposition of a restrictive measure that would otherwise be contrary to Section 3, the Government may issue, under the authority of this Section, a normative act establishing such measure.

9.2 Any restrictive measure so established must strictly conform to the requirements of Section 4 and, to the extent consistent with the fulfillment of the concerned obligation, shall be subject to any other applicable provision of the present law.

CHAPTER 4

IMPORTED GOODS

Part 1

Basic Rules for Imported Goods

Section 10

Domestic Treatment of Imported Goods

Except as specifically otherwise provided by the present law or a normative act issued pursuant to the present law, Kosovo shall accord to goods that have been imported treatment that is no less favorable than the treatment accorded to like domestic goods; including, but not limited to, treatment with respect to the level and application of all taxes and other internal charges, and treatment affecting the sale, purchase, transportation, processing, distribution or use of goods.

Section 11

Most Favored Nation Treatment

11.1 If there is in effect a bilateral or multilateral international agreement that international law requires Kosovo to observe, and such agreement obligates Kosovo to accord most-favored-nation treatment to importations of goods originating in a specified external area or areas, then, except as specifically otherwise provided in the present law or a normative act authorized by the present law, Kosovo shall accord most-favored-nation treatment to importations of such goods.

11.2 Where the importation of a good is entitled to most-favored-nation treatment under Section 11.1, Kosovo shall accord the importation of such good treatment that is equal to the most favorable treatment that Kosovo accords to the importation of any like good originating in any external area. . Furthermore, any advantage, favor, privilege or immunity granted by Kosovo to any good that has been imported, shall be accorded immediately and on identical terms to any like good entitled to most-favored-nation treatment under Section 11.1.

11.3 In determining the specific extent of the most-favored-nation treatment required by Sections 11.1 and 11.2, no account shall be taken of or reference made to any preferential, privileged or other more favorable treatment accorded to the importation of goods from certain external areas if such preferential, privileged or other more favorable treatment is required by an obligatory provision of a bilateral or multilateral free trade area or customs union agreement, or of an interim bilateral or multilateral agreement that is intended to further the formation of a free trade area or customs union, that international law requires Kosovo to observe.

11.4 Nothing in Section 11.1 or 11.2 shall be construed as prohibiting the granting of most-favored-nation treatment to imports of goods originating in external areas that are not covered by a bilateral or multilateral agreement.

Part 2

Technical Requirements and Standards

for Imported Goods

Section 12

Sanitary and Phytosanitary Requirements

12.1 The Government shall have the authority to issue one or more normative acts pursuant to the present law establishing, or authorizing one or more designated public authorities to establish (i) sanitary and/or phytosanitary requirements that specified types or classes of goods must comply with and (ii) reasonable and objective conformity assessment procedures to ensure the conformity of the concerned goods with the concerned requirements.

12.2 All such sanitary and phytosanitary requirements and conformity assessment procedures, their method of application and the list of the types/classes of goods to which they shall apply must be prepared, adopted and implemented in a manner that, on the basis of sound scientific evidence or principles, is clearly related to and necessary for the achievement of one or more of the following purposes: (i) protecting human or animal life or health from risks arising from additives, contaminants, toxins, or disease-causing or disease-carrying organisms in food or feed; (ii) protecting human life or health from diseases carried by plants or animals; (iii) protecting animal or plant life or health from pests, diseases, or disease-causing or disease-carrying organisms; or (iv) preventing or limiting damage to Kosovo from the entry, establishment or spread of pests.

12.3 No sanitary or phytosanitary requirement shall be more trade restrictive than the relevant internationally recognized standard or the relevant guideline and/or

recommendation issued by a widely recognized international organization. Notwithstanding the foregoing sentence, a more restrictive sanitary or phytosanitary requirement may be established, but only if such requirement can clearly and objectively be justified by sound scientific evidence demonstrating that the more restrictive requirement is needed reasonably to achieve one of the purposes specified in Section 12.2 above.

12.4 Each sanitary and phytosanitary requirement, and the relevant conformity assessment procedures, shall apply equally to all like goods regardless of origin; *provided, however*, that such a requirement or conformity assessment procedure may reasonably discriminate among like goods originating in different areas, but only if there is a clear, objective and internationally accepted justification for such discrimination. No such discrimination shall be permitted among like goods originating in different areas if the relevant conditions in those areas are identical or highly similar.

12.5 The preparation, adoption and implementation of such sanitary and phytosanitary requirements, conformity assessment procedures and the lists of the types/classes of goods to which they apply, (i) shall not be carried out with a view to creating, or in a manner having the effect of, an unnecessary obstacle to trade; and (ii) shall otherwise be prepared, adopted and implemented, as far as possible, in accordance with the relevant requirements and recommendations of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures.

Section 13

Technical Regulations

13.1 The Government shall have the authority to issue one or more normative acts pursuant to the present law establishing, or authorizing one or more designated public authorities to establish (i) technical regulations that specified types or classes of goods must comply with and (ii) reasonable and objective conformity assessment procedures to ensure the conformity of the concerned goods with the concerned regulations.

13.2 All such technical regulations, conformity assessment procedures, their method of application and the list of the types/classes of goods to which they shall apply must be prepared, adopted and applied in a manner that is clearly related to and necessary for the achievement of one or more of the following purposes: (i) protecting human life, health or safety, (ii) protecting animal or plant life or health; (iii) protecting the environment; or (iv) preventing deceptive practices; *provided, however*, that any measure having a purpose that is specified in Section 12.2 shall not be within the scope of this Section 13.

13.3 The preparation, adoption and implementation of such technical regulations, related conformity assessment procedures and the lists of the types/classes of goods to which they apply (i) shall not be carried out with a view to creating, or in a manner having the effect of, an unnecessary obstacle to trade, (ii) shall be no more trade-restrictive than reasonably necessary to achieve the purpose for which they have been created, (iii) shall apply equally to all like goods regardless of origin, and (iv) shall otherwise be prepared, adopted and

implemented, as far as possible, in accordance with the relevant requirements and recommendations of the WTO's Agreement on Technical Barriers to Trade.

13.4 Each such technical regulation shall be based on the relevant international standard, or the relevant part thereof, if such standard exists or its development is at an advanced stage; *provided, however, that if, on the basis of sound scientific evidence or principles, it can be demonstrated that a technical regulation based on such a standard is not achieving or will not achieve, in an effective or appropriate manner, the purpose for which it has been or will be created, such technical regulation may deviate from that standard to the extent needed reasonably to achieve such purpose.*

Section 14

Product Standards

14.1 Any public authority of Kosovo or other undertaking operating in the territory of Kosovo that is engaged in or has responsibility for the preparation, adoption or implementation of product standards (a "domestic standard setting body") shall comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the WTO's Agreement on Technical Barriers to Trade, as this may be amended from time to time.

14.2. The Government shall issue a normative act containing reasonable provisions and requirements directed at ensuring such compliance by domestic standard-setting bodies. If any domestic standard-setting body has membership rights and/or influence in a regional or international standard-setting body, the Government shall issue a normative act containing reasonable provisions and requirements directed at ensuring that such domestic standard-setting body exercises any such rights and/or influence in a manner directed at encouraging such regional/international body to accept and comply with the Code specified in paragraph 14.1.

14.3. The preparation, adoption and implementation of product standards, related conformity assessment procedures and the lists of the types/classes of goods to which they apply (i) shall not be carried out with a view to creating, or in a manner having the effect of, an unnecessary obstacle to trade, (ii) shall be no more trade-restrictive than reasonably necessary to achieve the purpose for which they have been created, (iii) shall apply equally to all like goods regardless of origin, and (iv) shall otherwise be prepared, adopted and implemented, as far as possible, in accordance with the relevant requirements and recommendations of the WTO's Agreement on Technical Barriers to Trade.

Part 3

Import Permits

Section 15

General Rule: No Import Permit Required

With the exception of goods specified in the Import Control List established pursuant to Section 16 below, the importation of goods into Kosovo shall not require a permit or any other type of permission or license from any public authority.

Section 16

Import Control List

The Government shall have the authority to establish a list of goods called the “Import Control List.” Such list shall specify those types and/or classes of goods the import of which requires a permit. The Government may include on such list a type or class of good only if there are clear, substantial and objective reasons demonstrating that it is necessary to control the import of such type or class of good in order to materially advance the achievement of one of the following purposes:

- (a) to protect from appreciable risks the environment or the life or health of humans, plants or animals;
- (b) to protect public order or morals;
- (c) to prevent an infringement of intellectual property rights;
- (d) to protect consumers from fraud and deceptive practices;
- (e) to implement a provision of an international agreement that Kosovo is obligated to implement;
- (f) to implement restrictions on import transactions involving gold;
- (g) to ensure the proper implementation and equitable allocation, among suppliers and/or importers, of an import quota imposed by Kosovo on imports of certain goods;
or
- (h) to ensure, in accordance with the needs of Kosovo, the best possible supply and equitable distribution of an essential good that is (i) demonstrably scarce in world markets or in Kosovo or (ii) subject to governmental export controls in the external area of origin of such good.

Section 17

Establishment of Criteria Required to Obtain an Import Permit

17.1 For each class or type of good included on the Import Control List, the Government shall establish, or require one or more designated public authorities to establish, in a normative act the criteria that must be met by an applicant in order to receive an import permit for such good.

17.2 All such criteria shall be transparent and clearly and substantially necessary for achieving the purpose underlying the inclusion of such type or class of good on the import control list.

17.3 All such criteria shall be non-discriminatory; however, where clearly and substantially needed to achieve the concerned purpose, it may be specified that an import permit for a specific type or class of good will only be granted to a holder of a relevant activity license; provided, however, that an applicant shall not be required to hold such an activity license if such a license is not required to handle or deal in like or directly competitive domestic-origin goods.

17.4 Neither the Government nor any public authority may use any provision of this Part 3, other than Section 18, to restrict the import of any type or class of good until the required import permit criteria and issuance procedures have been prepared, adopted and fully implemented.

Section 18

Prohibited Imports

18.1 If a class or type of good is included on the Import Control List in order to fulfill a purpose specified in points (a) – (e) of Section 16, and such purpose can only reasonably be achieved by prohibiting the import of such class or type of good, the Government may prohibit the import of such good.

18.2 If the importation of a class or type of good is prohibited, no person, undertaking or public enterprise shall be permitted to import, handle or deal in any such good. An importation of such a good by a public authority may be permitted if such importation (i) is clearly and substantially necessary for such public authority to achieve a legitimate public function and (ii) is not to be used or involved in any manner in the conduct of, or as a subject of, any commercial, business or economic activity.

Section 19

Restrictions on the Use or Disposition of Imported Goods.

If clearly necessary to achieving the concerned purpose, an import permit may contain conditions restricting the use or other disposition that may be made of the concerned imported good.

Section 20

Multiple Shipment Permits.

An import permit shall, to the extent consistent with the purpose underlying the inclusion of the concerned good on the Import Control List, permit the holder thereof to import a specified quantity of the concerned goods at any time, and in multiple shipments, over a specified period of time, not to exceed one year.

Section 21

Non-Commercial Importations and other Exemptions

21.1 Where it does not materially jeopardize the purpose underlying the inclusion of a class or type of goods on the Import Control List, the Government may issue a normative act exempting small-quantity, presumptively non-commercial, imports of

such goods from the otherwise applicable import permit requirement. Any such normative act shall specify transparent, objective, non-discriminatory criteria that must be met to qualify for such an exemption created pursuant to this paragraph.

21.2 If a type or class of good is on the Import Control List, the Government may issue a normative act containing provisions allowing importations of the concerned good to proceed without an import permit under circumstances: (i) that clearly indicate that the concerned import will not be introduced into the normal commerce of Kosovo or (ii) where the concerned purpose specified in Section 16 can be equally protected by some other effective means. This paragraph applies in particular to goods entered into a free zone, goods imported under special customs procedures for manufacturing or processing, goods imported under customs bond, and goods covered by special transit procedures.

Section 22

Consistency with WTO Requirements.

The preparation, adoption and implementation of all import permit requirements, criteria and procedures shall comply with the provisions of the WTO's Agreement on Import Licensing Procedures dealing with non-automatic licensing.

Part 4

Special Trade Measures

Section 23

Anti-Dumping Duties

23.1 The Government shall have the authority to prepare, adopt and implement a normative act providing for the imposition of anti-dumping duties on importations of a specific type or class of good originating in a specific external area, if - after the conduct of a procedurally sound investigation - it is determined that (i) such goods from such area are being introduced into the commerce of Kosovo at less than their normal value, and (ii) such activity is causing or threatens to cause material injury to an established domestic industry producing a like product, or to retard materially the establishment of such a domestic industry.

23.2 The normative act authorized by the foregoing paragraph shall be prepared, adopted and implemented in strict conformity with the requirements of the WTO's Agreement on the Implementation of Section VI of the General Agreement on Tariffs and Trade 1994.

23.3 Neither the Government nor any public authority may impose anti-dumping duties or other antidumping measures on any imported good until a normative act fully complying with this Section 23 has been prepared, adopted and fully implemented.

Section 24

Countervailing Duties

24.1 The Government shall have the authority to prepare, adopt and implement a normative act providing for the imposition of countervailing duties on importations of a specific type or class of good originating in a specific external area, if - after the conduct of a procedurally sound investigation - it is determined that (i) such goods from such area are benefiting from a subsidy that is either actionable or prohibited within the meaning of the WTO's Agreement on Subsidies and Countervailing Measures, and (ii) as a consequence of such benefit imports of such goods are causing or threaten to cause material injury to an established domestic industry producing a like product, or to retard materially the establishment of such a domestic industry.

24.2 The normative act authorized by the foregoing paragraph shall be prepared, adopted and implemented in strict conformity with the requirements of the WTO's Agreement on Subsidies and Countervailing Measures.

24.3 Neither the Government nor any public authority may impose countervailing duties or other countervailing measures on any imported good until a normative act fully complying with this Section 24 has been prepared, adopted and fully implemented.

Section 25

Safeguard Measures

25.1 The Government shall have the authority to prepare, adopt and implement a normative act providing for the imposition of safeguard duties on all importations of a specific type or class of good, without regard to the origin thereof, if - after the conduct of a procedurally sound investigation - it is determined that (i) such goods are being imported in increased quantities and (ii) such increased quantities are causing or threatening to cause serious injury to an established domestic industry producing like or directly competitive products.

25.2 The normative act authorized by the foregoing paragraph shall be prepared, adopted and implemented in strict conformity with the requirements of the WTO's Agreement on Safeguards.

25.3 No safeguard measures may be imposed on any imported good until a normative act fully complying with this Section 25 has been prepared, adopted and fully implemented.

Part 5

Other Measures Affecting Imported Goods

Section 26

Intellectual Property Border Measures

26.1 The Government shall issue, under the authority of this provision, a normative act that makes available border enforcement measures to protect the rights of a person

or undertaking in or to intellectual property against the importation of goods that infringe such rights.

26.2 The normative act required by the foregoing paragraph shall provide a reasonable procedure that such right-holders may use to obtain the cooperation of MTI and the customs authorities of Kosovo to enforce such rights at the border. Such enforcement measures shall also authorize the customs authorities to seize and dispose of goods that infringe such rights.

26.3 At a minimum, such normative act shall provide such a procedure with respect to counterfeit trademark goods and pirated copyright goods.

26.4 Such normative act shall establish appropriate procedural safeguards that ensure that it is not abused by any person, undertaking or public authority to impair legitimate trade.

26.5 The normative act authorized by the foregoing paragraphs shall be prepared, adopted and implemented in conformity with the requirements of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights.

CHAPTER 5

EXPORTED GOODS

Part 1

Basic Rules for Exported Goods

Section 27

Most Favored Nation Treatment

27.1 If there is in effect a bilateral or multilateral international agreement that international law requires Kosovo to observe, and such agreement obligates Kosovo to accord most-favored-nation treatment to the export of goods destined for a specified external area or areas, then, except as specifically otherwise provided in the present law or a normative act authorized by the present law, Kosovo shall accord most-favored-nation treatment to such exportations.

27.2 Where the export of a good is entitled to most-favored-nation treatment under paragraph 27.1, Kosovo shall accord such an exportation treatment that is equal to the most favorable treatment that Kosovo accords to the export of any like good, regardless of destination. This requirement extends to the establishment and application of (i) export duties, charges and taxes of any kind imposed on or in connection with such an export, (ii) the method of levying such duties, charges and taxes, and (iii) the rules and formalities that must be followed in connection with such exportation.

27.3 In determining the specific extent of the most-favored-nation treatment required by paragraphs 27.1 and 27.2, no account shall be taken of or reference made to any

preferential, privileged or other more favorable treatment accorded by Kosovo to the export of goods to external areas where such preferential, privileged or other more favorable treatment is required by an obligatory provision of a bilateral or multilateral free trade area or customs union agreement, or of an interim bilateral or multilateral agreement that is intended to further the formation of a free trade area or customs union, that international law requires Kosovo to observe.

27.4 Nothing in paragraph 27.1 or 27.2 shall be construed as prohibiting the granting of most-favored-nation treatment to exports destined for an external area not covered by a bilateral or multilateral agreement.

Part 2

Technical Requirements and Standards **for Exported Goods**

Section 28

Sanitary and Phytosanitary Requirements,

Technical Regulations and Product Standards

28.1 To the extent reasonably required to ensure that goods to be exported from Kosovo are not of an inferior quality, the Government may issue one or more normative acts requiring that certain types or classes of goods be accompanied by a certificate evidencing that they conform to certain relevant technical regulations, sanitary or phytosanitary requirements, and/or product standards.

28.2 Any requirement established pursuant to the foregoing paragraph shall be applied equally to all concerned producers and exporters.

28.3 In particular, no such requirement shall be developed, adopted or applied in a manner that discriminates among exports on the basis of the intended destination thereof.

Part 3

Export Permits

Section 29

General Rule: No Export Permit Required

With the exception of goods specified in the Export Control List established pursuant to Section 30 below, the exportation of goods from Kosovo shall not require a permit or any other type of permission or license from any public authority.

Section 30

Export Control List.

The Government shall have the authority to establish a list of goods called the “Export Control List.” Such list shall specify those types and/or classes of goods the export of which requires a permit. The Government may include on such list a type or class of good only if there are clear, substantial and objective reasons demonstrating that it is necessary to control the export of such type or class of good in order to materially advance the achievement of one of the following purposes:

- (a) to prevent an infringement of intellectual property rights;
- (b) to implement restrictions on export transactions involving gold;
- (c) to protect endangered species of plants or animals;
- (d) to protect items designated as national treasures and having recognized and significant artistic, historic or archaeological value;
- (e) to implement obligatory provisions in an international agreement;
- (f) to implement measures that are clearly and substantially necessary for the conservation of exhaustible natural resources, but only if such measures are accompanied by significant government controls on domestic production and consumption of such resources;
- (g) to implement temporary measures imposed for the purpose of ensuring a minimally adequate supply on the domestic market of basic and essential foodstuffs or other vital goods; however, export restrictions for such purpose shall only be permitted in cases where it can clearly be demonstrated that other potential measures are not adequate or practical; or
- (h) to ensure the proper implementation and equitable allocation among exporters of a quota imposed by a foreign state or external area on imports of such goods.

Section 31

Criteria Required to Obtain an Export Permit.

31.1 For each class or type of good included on the Export Control List, the Government shall establish, or require one or more designated state authorities to establish, the criteria that must be met by an applicant in order to receive an export permit for such good.

31.2 All such criteria shall be non-discriminatory; however, where clearly and substantially needed to achieve the concerned purpose, it may be specified that an export permit for a specific type or class of good will only be granted to a holder of a relevant activity license; provided, however, that an applicant shall not be required to hold such an activity license if such a license is not required to handle or deal in like or directly competitive domestic-origin goods.

31.3 All such criteria shall be transparent and clearly and substantially necessary for achieving the purpose underlying the inclusion of such type or class of good on the Export Control List.

31.4 The Government may not use any provision of this Part 3 to restrict the export of the concerned type or class of good until the required export permit criteria and issuance procedures have been prepared, adopted and fully implemented.

Section 32

Prohibited Exports

32.1 If a class or type of good is included on the Export Control List in order to fulfill a purpose specified under (a) – (g) of Section 30, and such purpose can only reasonably be achieved by prohibiting the export of such class or type of good, the Government may generally prohibit the export of such good.

32.2 If the exportation of a class or type of good is prohibited - either generally or to a specific state or area - no person, undertaking or public enterprise shall be permitted to export such goods. An exportation of such goods by a public authority may be permitted only if such exportation (i) is clearly and substantially necessary for such public authority to achieve a legitimate public function and (ii) is not done in the furtherance of any commercial, business or economic activity.

Section 33

Restrictions on the Use or Disposition of Exported Goods

If clearly necessary to achieving the concerned purpose, an export permit may contain conditions restricting the use or other disposition that may be made of the concerned exported good and requiring the applicant / holder to guarantee that those conditions will be complied with.

Section 34

Export of Services and Information

If clearly and substantially necessary to fulfill a purpose specified in point (a) of Section 30, the Government may impose restrictive measures on the provision of services and/or information by residents to non-residents.

Section 35

Multiple Shipment Permits

An export permit shall, to the extent consistent with the purpose underlying the inclusion of the concerned good on the Export Control List, allow the holder thereof to export a specified quantity of the concerned goods at any time, and in multiple shipments, over a specified period of time, not to exceed one year.

Section 36

Non-Commercial Exportations and other Exemptions

Where it does not materially jeopardize the purpose underlying the inclusion of a class or type of goods on the Export Control List, the Government may issue a

normative act exempting small-quantity, presumptively non-commercial, exports of such goods from the otherwise applicable export permit requirement. Any such normative act shall specify transparent, objective, non-discriminatory criteria that must be met to qualify for such an exemption created pursuant to this paragraph.

Part 4

Other Measures Affecting Exported Goods

Section 37

Intellectual Property Border Measures

37.1 The Government shall have the authority to issue, under the authority of this Section 37, a normative act that makes available border enforcement measures to protect the rights of a person or undertaking in or to intellectual property against the exportation of goods that infringe such rights.

37.2 The normative act authorized by the foregoing paragraph shall provide a reasonable procedure that such right-holders may use to obtain the cooperation of MTI and the customs authorities of Kosovo to enforce such rights at the border. Such enforcement measures shall also authorize the customs authorities to seize and dispose of goods that infringe such rights.

37.3 At a minimum, such normative act shall provide such a procedure with respect to counterfeit trademark goods and pirated copyright goods.

37.4 Such normative act shall establish appropriate procedural safeguards that ensure that it is not abused by any person, undertaking or public authority to impair legitimate trade.

37.5 The normative act authorized by the foregoing paragraphs shall be prepared, adopted and implemented in conformity with the requirements of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights.

Section 38

Reserved

CHAPTER 6

RIGHT TO IMPORT AND EXPORT

Section 39

Non-Commercial Imports and Exports

39.1 Every resident and every non-resident has the right to import, for non-commercial purposes, goods that are not subject to an import permit requirement and to export, for non-commercial purposes, goods that are not subject to an export permit requirement.

39.2 The Government may establish, under Section 21, conditions governing the ability of residents and non-residents to import without a permit, for non-commercial purposes, a good that is otherwise subject to an import permit requirement.

39.3 The Government may establish, under Section 37, conditions governing the ability of residents and non-residents to export without a permit, for non-commercial purposes, a good that is otherwise subject to an export permit requirement.

Section 40

Commercial Imports and Exports.

40.1 A resident that has been registered in the commercial or business registry of Kosovo and that has the right to engage in commercial, business or economic activity in Kosovo shall automatically have the right to import and export goods in commercial quantities and for commercial purposes.

40.2 The right established by the foregoing paragraph is subject to and shall be exercised in accordance with any restrictive measure that has been established under the authority of the present law. Except for restrictive measures authorized by the present law, no normative act shall impose, and no public authority shall prepare, adopt or implement, any requirement or procedure impairing the right established by the foregoing paragraph or establishing a condition on its exercise.

40.3 Non-residents shall not have the right to import or export goods in commercial quantities or for commercial purposes.

40.4 A resident that has not been registered in the commercial or business registry or that does not have the right to engage in commercial, business or economic activity within Kosovo shall not have the right to import or export goods in commercial quantities or for commercial purposes.

CHAPTER 7

SUPPLEMENTARY PROVISIONS

Section 41

Transactions with Gold

The present law shall not impair the Government's ability to freely regulate external trade activity involving gold.

Section 42

Service Transactions

Transactions involving the provision of services by residents to non-residents or by non-residents to residents shall be free of restrictive measures, except to the extent that such restrictive measures are specifically provided for in other special legislation regulating the services and service-providers concerned.

Section 43

No Discrimination in Exchange Availability for Imported Goods

43.1 Foreign exchange needed to pay for imported goods that are subject to an import permit requirement shall be made available on the same terms, conditions, procedures and bases as the foreign exchange made available to pay for imported goods that are not subject to such a requirement.

43.2 The terms, conditions, procedures and charges applicable to the international transfer of funds to pay for imported goods shall not discriminate between imported goods that are subject to an import permit requirement and imported goods that are not subject to such a requirement.

Section 44

Fees and Formalities

44.1 No fees may be imposed on or in connection with an importation or exportation except as are clearly related to, and necessary to compensate for, services actually rendered. In all cases, any fee charged shall reflect the actual cost of services actually rendered and shall not represent a disguised trade restriction, or a means of obtaining revenue for fiscal purposes.

44.2 In the interest of efficiency, the Government may establish fixed and/or ad valorem fees and fee structures having established minimum and maximum levels for services routinely and regularly provided in connection with importations and exportations; however, such fees and fee structures shall strictly comply with any applicable WTO requirements or guidelines.

Section 45

Transparency

45.1 If the a restrictive measure is covered by an international agreement, and such agreement requires a specific period between publication and the effective date, then such restrictive measure shall not come into effect until such longer period has elapsed.

45.2 Any normative act authorized by the present law shall describe the goods affected thereby exactly as they are referred to in the customs legislation of Kosovo, especially the customs tariff nomenclature.

Section 46

Violations and Penalties

Each normative act authorized by the present law shall contain provisions specifying the penalties that may be imposed for violations thereof. All such normative acts shall ensure that such penalties are proportionate to the degree and type of violation

concerned and the degree of harm caused by such violation to the interest being served by the provision violated.

CHAPTER 8

FINAL PROVISIONS

Section 47

Coordination with UNMIK

The actions and decisions in Sections 9.1, 12.4, 23.1, 26.1, and 37.1 shall closely be coordinated with UNMIK.

Section 48

Implementation

The Government has the authority to issue the normative acts needed to implement the present law.

Section 49 Applicable Law

The present law shall supersede any provision of any other existing regulation or applicable law that is inconsistent with it.

Section 50

Entry into Force

This law shall enter into force upon approval by the Assembly, signature by the President of the Assembly, where as the promulgation will be done by the SRSG, in accordance with the Constitutional Framework.