

TRADE

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Devote more attention to by-laws because the lack of by-laws makes the trade law largely inapplicable in practice.	2011			√
Harmonization with EU regulations and standards is needed.	2012		√	
Simplification of the importation procedure.	2012			√

CURRENT SITUATION

The Law on Trade occupies a central place among the rules governing trade in goods and services. Having in mind that since the beginning of 2013 there have been no significant improvements in this area, ahead of us is a period in which amendments to the legal framework are expected. The first step in that direction is the adoption of a new Law on Trade.

As regards the import of food of animal origin, in the importation stage we are still facing the problem of certificates issued in most countries of the European Union (EU), which do not correspond to certificates required for certain groups of products in Serbia. In addition, veterinary certificates are harmonized for certain product categories, but the problem in practice is the unavailability of an online form of these certificates for download.

Serbian regulations stipulate that packaging must contain a veterinary control number and manufacturer data. If such information is missing, it must be added to the packaging of a product prior to its transfer across the border. This problem would not exist if Serbian regulations were harmonized with the EU acquis, as the latter does not require that this data appear on the product or its packaging. The same issue applies to other areas of trade as well.

The import procedure itself is complicated and burdened with formalities. This procedure lasts too long (usually from 10 to 15 days). This period is problematic when it comes to perishable items. The procedure is the same even if the same importer imports, at short intervals (e.g. every week), the same products, manufactured in the same way by the same manufacturer. Enabling a risk analysis of a smaller number of imports, or issuing a marketing authorization before obtaining an analysis result is a solution that would offer a certain degree of flexibility and would be a significant step forward.

In the field of exports of domestic products, organizing an aggregate shipment of foods of animal origin produced by

a variety of local producers and collected in the warehouse of the trader is impossible in practice, even if the warehouse is properly licensed for exports and supervised by a competent veterinary inspector. The fact that exporting aggregate shipments of products that have been imported into Serbia by a trader (so-called re-export) is perfectly legal adds to the absurdity. Also contributing to the difficulties in the export of these types of products (especially meat and dairy products) to EU member states is the fact that Serbian food sector regulations and standards are still not harmonized with the corresponding regulations and standards applicable in the EU, meaning that the food produced in Serbia which does not meet the quality standards prescribed in the EU cannot be exported to EU countries.

POSITIVE DEVELOPMENTS

Further, considering that the biggest challenges in the past were related with the provisions of the Law on Trade governing the sale incentives, the new Law on Trade regulates this matter in detail, enabling traders to increase their volumes of sale.

A special instrument is available to corporate entities – a lawsuit for unfair competition – which arguably provides for an additional layer of legal certainty. In that regard, a legal entity whose business reputation has been tarnished may file a lawsuit seeking compensation for both tangible and intangible damages, and further request that the defamatory statements be labelled as unfair competition and, as such, further prohibited, and that the consequences thereof be eliminated.

The adoption of the Law on Inspection Oversight, marked the beginning of the process of systematic coordination of inspection oversight in the Republic of Serbia, the establishment of cooperation among the inspectorates, as well as improved cooperation between inspectorates and other government bodies and private sector entities, thus significantly diminishing arbitrariness, inconsistencies, corruption,

and other possible abuses. The new Law on Trade is harmonized with the Law on Inspection Oversight and the rules regulating the obligations of a trader and consequences for their breach will be unified in one piece of legislation.

REMAINING ISSUES

The elimination of shortcomings related to the import of products would enable the efficiency and speed needed, saving time and money both to businesspeople and the government. Certain import and sanitary procedures are not even adequately regulated by the law in terms of the documentation (including its content) which is necessary to be submitted during the importation procedure, whereas importers are forced to rely on the general instructions published on the web pages of the competent authorities or obtained through direct contact with the officers of the respective authorities. Also, when importing goods, the question of the justification of the number of collected samples arises, where it would be useful to define the sampling frequency in relation to a specific product over a defined period of time. Then again, if the pallet is opened/unstrapped for sampling, the goods recipient will have it declared as "damaged upon receipt," causing further negative impact.

One of the initiatives sent to legislator is the "recognition of documents" (foreign laboratories, test reports and certificates, declarations of conformity), but the problem is that there are too few laboratories in Serbia cooperating with their counterparts in the EU to cover such a vast business area as trade certainly is.

Finding simple solutions for overcoming possible differences in practice between Serbia and its neighbouring countries may be achieved through the conclusion of bilateral agreements or through the issuance of appropriate instructions by the state authorities.

Besides the passage of a new Law on Trade, additional efforts should be invested into the adoption of by-laws in order to enable a smooth implementation of the respective law. Inspection check-lists published on the web pages of the relevant inspection authorities have been used so far in practice by traders for the identification of documentation which must be held at retail points of sale and related legal conditions which must be met. However, this system fails to provide an adequate level of legal certainty and has led to situations where inspectorates in different parts of the country have applied different criteria in controlling and disciplining traders, due to lack of uniformity in their interpretation of regulations.

FIC RECOMMENDATIONS

- Devote more attention to by-laws because the lack of by-laws made the previous Trade Law largely inapplicable in practice.
- Harmonization with EU regulations and standards is further needed.
- Simplification of the importation procedure.