

DRAFT
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The Law of the Republic of Kazakstan on Anti-Dumping

This Law determines the basic notions and principles of anti-dumping legislation, investigation procedures to be held in order to determine dumping and injury and also terms of introduction and termination of anti-dumping measures.

Chapter 1. General provisions.

Article 1. Terms and definitions.

Current Law shall use the following notions:

"Like product" - a product which is identical, i.e., alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not like in all respects, has characteristics and components closely resembling those of the product under consideration;

"Anti-Dumping investigation" - investigation, in resp

2. In cases, stipulated by this Law and other legislative acts of the RK , President and

all like products produced by Kazakstan producers.

Article 10. Initiation of anti-dumping investigation on the initiative of the Authorized Body.

In case the Authorized Body has sufficient evidence of dumping and injury caused by importation of the dumped product, the Authorized Body has the right to initiate an anti-dumping investigation on its own initiative, in accordance with the procedure established by the RK Government.

Article 11. Grounds for refusal to initiate anti-dumping investigation

The Authorized Body shall refuse to initiate an anti-dumping investigation on the basis of the application accepted, in case it will be clarified that :

- (a) the margin of dumping is less than 2 per cent, expressed as a percentage of the export price ;
- (b) the volume of dumped exports and injury is insignificant , i.e. imports of the products from that exporting country under consideration into Kazakstan represents less than three (3) per cent of imports of the like product into Kazakstan, unless countries under investigation in respect of which an application was presented collectively account for more than seven (7) per cent of imports of the like product in Kazakstan.

Article 12. Withdrawal of Application on determination of existence of dumping and injury.

1. Any application may be withdrawn by an applicant prior to initiation or in the process of an anti-dumping investigation. In case, the application has been withdrawn prior to initiation of anti-dumping investigation, it shall be considered not to have been made.
2. In case an application has been withdrawn in the process of anti-dumping investigation, the Authorized Body has the right either to continue the investigation on its own initiative or terminate it without measures undertaken.

Article 13. Decision on Initiation of anti-dumping investigation.

1. Any decision to initiate or refuse to initiate an anti-dumping investigation shall be adopted by the Authorized Body within 60 days of the date when the application was accepted.

The decision to initiate or refuse to initiate an anti-dumping investigation shall be made on the basis of all provided data after examination as set forth in Articles 9, 11, 8, 10 of this Law.

The Authorized Body shall notify all interested parties of its decision; in case of refusal, it shall notify of the reasons for not initiating the investigation.

Article 14. Public notice of initiation of anti-dumping investigation

1. When the Authorized Body has decided to initiate an anti-dumping investigation the Authorized Body:
 - a) shall notify the initiation of an anti-dumping investigation to all interested parties;
 - b) shall publish a notice in not less than two periodical editions of the Republican circulation. official mass media.

2. A notification of the initiation of an anti-dumping investigation shall contain information on the following:

(a) the name of the Authorized Body conducting an anti-dumping investigation;

- a) actual amounts paid and received by the supplier in question or other supplier in connection with production and sale of like product in the domestic market of the country of origin and/or export;
- b) the weighted average actual amounts, paid and received by other suppliers in respect of whom an anti-dumping investigation is being conducted in connection with the production and sale of like product in the domestic market of the country of origin and/or export.

5. If it is not possible to use either of these methods, the Authorized Body shall have the right to use another reasonable method, but only under the condition that the amount of profit established determined by such method shall not exceed the profit, obtained by other suppliers while selling like products of the same category in the domestic market of the country of origin and/or export.

Article 19. Calculation of Export price.

1. In cases, when an export price is not available (barter transactions), or when the export price is unreliable in the opinion of the Authorized Body conducting an anti-dumping investigation due to presence of connections or agreement on compensation between an exporter and importer or the third party, the export price shall be constructed on the basis of the price at which the imported products are first resold to a buyer, not dependent on the supplier or the seller.

2. Under circumstances, stipulated by Par. 1 of this Article, while calculating the export price, the Authorized Body shall be entitled to omit all the transactions between the related parties.

Article 20. Comparison of export price and normal price.

1. The Authorized Body shall make a comparison between the export price and the normal price. Such comparison shall be made at one and the same stage of a trade transaction, usually at the ex factory level, and in respect of sales carried out, if possible, at one and the same time. In each case, all the necessary allowances shall be made, taking into account the differences, which affect comparability of prices, including the difference in terms of imports, taxation, stage of trade transaction, quantity, physical characteristics and also any other differences in respect of which the interested parties provide evidence of their impact upon the price comparability.

2. In cases when the export price is calculated on the basis of a price at which the imported product is resold to an independent buyer for the first time in accordance with Article 186 of this Law, corrections for the expenses, including duties and taxes paid in the period between importation and resale and also for the amount of profit made as the result of the importation and distribution sale of the product shall be included. If in such cases comparability of prices is affected, the Authorized Body shall establish the normal price at the stage of trade transaction equivalent to the stage at which the export price was calculated or shall make necessary allowances foreseen by this Article.

3. The Authorized Body has the right to require the information necessary for such comparison from the interested parties. In each concrete case it establishes the necessary procedure for provision of the evidence by each interested party.

Article 21. Determination of the margin of dumping.

1. The presence of a margin of dumping shall be determined on the basis of a comparison of a weighted average normal price with a weighted average price of all comparable export transactions, or by comparison of normal price with export prices in each concrete transaction.
2. Normal price determined on the basis of a weighted average may be compared with the prices of concrete export transactions if the Authorized Body finds that the export price is significantly different for different customers, regions or time periods. In such circumstances the Authorized Body shall give an explanation to the interested parties, why such differences can not be taken into account while comparing either weighted average quantities or the concrete transaction prices. A brief explanation shall also be given in the notification on application of provisional measures or anti-dumping duties.

Article 22. The procedure for determination of margin of dumping

1. The Authorized Body shall determine an individual margin of dumping for each supplier of the product involved in an anti-dumping investigation.
2. In cases when the number of the suppliers or types of products involved in an anti-dumping investigation makes it practically impossible to determine the individual amount of dumping for each of them, the Authorized Body may limit the research by the utilization of a statistically valid selection of suppliers or types of products on the basis of information available to the Authorized Body at the moment of making the selection, or by the highest percentage of exports from the country involved in the anti-dumping investigation.
3. In cases where the Authorized Body restricts the investigation as it is stipulated in this Article, the suppliers not involved in the preliminary selection may also provide data. The Authorized Body determines the individual amount of dumping for each supplier, not involved in the preliminary selection, if he provides the necessary information within the time frame when it is to be taken into consideration during conduction of an anti-dumping investigation, except cases where the large number of the suppliers in case of individual consideration would prolong the anti-dumping investigation period and would interrupt the timely completion of the case.

Article 23. Sales at a price lower then the level of production and sales costs.

1. The Authorized Body does not consider the sales of the product which is under anti-dumping investigation in the domestic market of the exporting and/or producing country or sales to a third country at prices lower than the level of the production and sales costs per unit of the product as sales made in the ordinary course of trade, because of the under-pricing and does not take into account these sales while determining the normal price in cases these sales took place :
 - a) within an extended period of time (up to one year, but not less than six months);
 - b) in substantial quantity;
 - c) at prices which do not provide for the recovery of all costs within a reasonable period of time.
2. If prices, been lower than the production and sale costs at the moment of sale, and higher then weighted average costs in the period of investigation, the Authorized Body considers such prices as providing for the recovery of all costs within a reasonable period of time.
3. Sales at prices lower then the level of costs per unit are considered as made in substantial quantity if the Authorized Body determines that :

- a) the weighted average sale price in transactions being taken into account in the process of determination of normal price are lower than the weighted average costs per production unit ; or
- b) the volume of sales at prices lower than the production and sales costs per production unit is no less than twenty (20) percent of the volume of sales in transactions being taken into account for the determination of normal price.

3. If prices, been lower than the production and sale costs at the moment of sale, and higher than weighted average costs in the period of investigation, the Authorized Body considers such prices as providing for the recovery of all costs within a reasonable period of time.

Article 24. Currency conversion while determination of dumping.

If comparison of export price and normal price requires a conversion of currencies, the Authorized Body should make such conversion using objectively justified exchange rate. Normally the date of contract, purchase order, confirmation of the order or invoice is considered as the date of sale, depending on the document determining the terms of the sale.

If export imports is directly linked with the sale of foreign currency, received as payment for this imports, by a supplier in forward markets, the Authorized Body shall take into account the rate of exchange applied for the forward sale of abovementioned currency.

The Authorized Body does not take into account short term fluctuations of the exchange rates. and the suppliers are allowed not less than 60 days for correction of export prices taking into account sustained changes of the exchange rates during the period of examination.

CHAPTER 5. DETERMINATION OF INJURY

Article 25. Principles of injury determination.

Determination of injury is based on evidence and includes the examination of the volume of dumped imports and its impact on prices of like products in the domestic market and the consequence of such imports for the domestic producers of these products.

Article 26. Cumulated evaluation of injury

When imports of a product from more than one country are subject to simultaneously held anti-dumping investigations, the Authorized Body may evaluate the cumulated impact of such imports, if it is determined that: the margin of dumping determined for imports from each country is two and more per cent as of export price and the volume of imports from each country is not negligible as stipulated in Article 110 of this Law and cumulated evaluation of the impact of imports is economically viable both for competition between imported products and between imported products and like products domestically produced.

Article 27. Research of volume and price of dumped product imports.

1. While examining the volume of dumped product imports the Authorized Body determines whether a significant increase of dumped product imports took place in absolute terms, or relatively to production or consumption in KazakhstanKazakhstan.
2. While examining the impact of the dumped product imports on prices, the Authorized Body determines the degree of under-pricing of such product imports in comparison with the price of like Kazakhstani product or to what degree imports of the dumped product effect the decline of prices or impede the increase which should have taken place otherwise.

Article 285. Evaluation of impact of dumped product imports on domestic producers industry

1. The examination of the impact of dumped product imports on domestic industryproducers includes evaluation of all economic factors and indexes effecting the position of this production by the Authorized Body, including :
 - actual and potential decline in sales, profit, production, market share, productivity, effectiveness of the investments profit or utilization of facilities;
 - factors affecting the prices in the domestic market;
 - margin of dumping;
 - actual and potential impact on cash flows, inventories, employment, wages, growth rate, opportunity to attract capital or investments.
2. In order to provide comparativeness of the production conditions of the dumped product and like product in KazakhstanKazakhstan, and also to exclude the impact of other factors, not stipulated by dumped product imports, the Authorized Body shall run the research of domestic production of like product examining the production-technological process, sales of like product by domestic producers and profit.

When the Authorized Body has no such data on the group of like products domestically produced, the impact of dumped product imports shall be evaluated by examination of the domestic production of the narrower nomenclature of products, included in like products group, for which necessary information can be provided.

Article 29. Determination Evidence of injury

1. The Authorized Body must determinemonstrate on the basis of actual data that imports of the dumped product causes injury to domestic producers as a result of dumping. The causal link between imports of the dumped product and injury to domestic producers shall be demonstrated determined by the Authorized Body by using any actual data provided by interested persons.
2. In addition to imports of the dumped product, the Authorized Body shall examine other known factors which at the same time caused injury to

Article 30. Injury to regional producers

When there is a concentration of dumped product imports in separate regional market of Kazakhstan and these imports cause injury to the domestic regional producers the Authorized Body has the right to conduct anti-dumping investigation in accordance with the provisions of this Law, in respect of that region.

Article 31. Threat of material injury.

1. The Authorized Body shall justify its determination of a threat of material injury to domestic producers caused by dumped product imports on the basis of analysis of the following factors :

- a) a significant growth of dumped product imports in the domestic market, pointing to the possibility of a further significant increase in imports;
- b) the supplier has sufficient export capacity or inevitable significant increase of export opportunities indicating the possibility of a significant further increase in imports of dumped product to Kazakhstan. In this case shall be taken into consideration the possibility for other export markets to absorb proposed volume of additional imports;
- c) imports at prices which will have a significant declining or depressing influence on the prices in the domestic market, which may increase the demand for additional imports;
- d) inventories of products in country of export and/or production, in respect of which an anti-dumping investigation is held.

CHAPTER 6. THE PROCEDURE OF THE ANTI-DUMPING INVESTIGATION

Article 32. Duration of Investigation

The duration of Authorized Body shall conclude investigations on dumping or injury within is one year. In special circumstances , when, on decision of the Authorized Body, it can be prolonged for additional 6 months.

Article 33. Information on Anti-Dumping Investigation

1. Upon initiation of the anti-dumping investigation, the Authorized Body shall send questionnaires to all interested parties.

The interested parties shall be given thirty days for reply. This time limit can be prolonged by the Authorized Body, but not more than for additional thirty days. The questionnaire shall be deemed to have been received seven days from the day on which it was sent to the respondent or transmitted to an official representative of the interested party.

During the anti-dumping investigation, the Authorized Body can request additional information from the interested parties, mentioning the timeframe for provision of such information.

2. Each interested party shall be given ample opportunity to present in writing any other evidence which it considers relevant. Written evidence shall nonetheless not be accepted after a period of 10 days following the hearings meetings of the interested parties, stipulated by Article 385 of this Law.

Article 34. Confidentiality of information on Anti-Dumping investigation

1. Any information which is provided to the Authorized Body as confidential during the anti-dumping investigation, shall not be disclosed without written permission of the party submitting it.
2. The party providing confidential information shall furnish non-confidential explanatory note thereof.

This explanatory note shall be made in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence or give an explanation why provision of such non-confidential explanatory note is impossible.

3. If the Authorized Body determines finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure, the Authorized Body may disregard such information unless it is demonstrated that the information is correct.
4. The person responsible for disclosure of confidential information shall be treated in accordance with current RK legislation.

Article 35. Verification of Information provided in accordance with anti-dumping investigation procedures

1. In order to verify information provided or to obtain further details, the Authorized Body may carry out investigations in other countries as required, provided it obtains the agreement of the relevant exporters and/or producers concerned and provided it notifies the official bodies representatives of the government of the country in question and unless the latter object to the investigation. Anti-dumping investigation on the territory of countries-members of WTO shall be performed in accordance with procedures provided for by WTO.
2. In order to examine information on dumping the Authorized Body shall select an investigation period from six months to one year immediately preceding the date of initiation of the investigation and information regarding injury shall normally be examined for a period of up to four three years.

Article 36. Reliance on Available Information on Anti-Dumping Investigation

In cases in which any interested party does not provide, necessary information within the period of time prescribed by the Authorized Body or otherwise significantly impedes the investigation the, the Authorized Body may reach determinations, on the basis of the information available.

Article 37. Filing

1. The Authorized Body shall maintain a file relating to each anti-dumping investigation in

1. During the anti-dumping investigation the Authorized Body must provide the interested persons with an opportunity to meet adverse parties in order to discuss investigation materials and provide additional information. Interested parties shall be

- price undertakings of exporter and/or producer;
- imposition of anti-dumping duties.

Article 45. Grounds for Termination of the anti-dumping investigation without measures undertaken

1. An anti-dumping investigation shall be terminated without measures undertaken as soon as it will be determined that: if :

- (a) there is not sufficient evidence of either dumping or of injury;
- (b) the margin of dumping is less than two per cent of export price or, that the volume of dumped imports (actual or potential), or the injury, is negligible in accordance with this Law.

2. Notification on termination of investigation without measures undertaken shall be published in official mass media.

Article 46. Assessment of anti-dumping duties.

1. The amount of the anti-dumping duty shall be sufficient for the elimination of the harmful consequence of dumping. The amount of anti-dumping duty shall not exceed the margin of dumping.

2. In case the amount paid in respect of provisional measures imposition is higher than the margin of dumping, the supplier has a right for refund in accordance with legally established procedures.

Article 47. Introduction of anti-dumping duties.

1. Decision on introduction of anti-dumping duties and rate thereof shall be adopted by the RK Government upon the proposal of the Authorized Body and shall be applicable at the date of its publication in official mass media.

In the decision the supplier or suppliers of the dumped product shall be named.

If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, only the supplying country concerned shall be named.

If several suppliers from more than one country are involved, either all the suppliers involved may be named, if this is impracticable, all the supplying countries involved.

2. The publication shall contain the relevant information described in Article 37 of this Law, as well as the reasons for the acceptance or rejection of arguments or claims made by the suppliers.

3. On the basis of the Resolution of the RK Government on imposition of anti-dumping duties, the Customs Authorities of the RK shall collect them on all imports in respect of which an anti-dumping investigation has been held, except as to the suppliers from which price undertakings have been accepted.

Article 48. Investigation in respect of third parties

1. If after the completion of the anti-dumping investigation third party not related to other suppliers of the product subject to anti-dumping duties starts exportation of like product an anti-dumping investigation in respect of him, shall be initiated within 30 days and completed no later than 12 months after the receipt of the application.

2. During the anti-dumping investigation, anti-dumping duties shall not be applied in respect of this third party, but provisional anti-dumping measures can be imposed in accordance with the procedures established by this Law.

Article 49. Retroactivity

1. No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the anti-dumping investigation

2. Anti-Dumping duties and provisional measures shall be applied only to the products entered for consumption after adoption and effectiveness of relevant decisions, with exception of cases stipulated in items 3) and 4) of this Article.

3. Anti-Dumping duties shall be applied from the date of introduction of the provisional measures when those measures have been applied to the concerned product on the basis of preliminary affirmative determination of an injury or a threat of injury to the domestic producers have been made and the relevant decision of the RK Government.

4. An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures if during anti-dumping investigation it was determined that :

(a) there is a history of dumping which caused injury;

(b) the injury, caused by massive dumped imports of a product in a relatively short time is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

Article 50. Anti-dumping duties period of validity

Anti-dumping duties shall be effective not more than five years from its imposition or last reconsideration. Procedure of preparation of reconsideration of anti-dumping duty shall be provided by the Authorized Body on its own initiative or upon a request made by the domestic producers, within 45 days from the notice of its impending termination. If it will be determined that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the Authorized Body shall appeal before the RK Government to prolong the application of the anti-dumping duty.

CHAPTER 8. PRICE UNDERTAKINGS

Article 51. Conditions for acceptance of Price undertaking

1. Anti-dumping investigation may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of voluntary undertakings from any person involved in anti-dumping investigation to revise its prices or to cease exports to KazakhstanKazakhstan at dumped prices so to eliminate the injurious effect of the dumping.

2. The Authorized Body has no right to require that price increases under such undertakings shall be higher than the determined margin of dumping. Price increases may be less than the dumping margin if the Authorized Body determines that such increase will be sufficient to eliminate the injury to the domestic producers.

3. Price undertakings may be suggested by the Authorized Body, but supplier shall not be forced to

enter into such an undertaking.

Article 52. Conditions for acceptance of price undertaking

1. Price undertakings shall be accepted adopted by the Authorized Body only after it has made, in accordance with Article 396 of this Law, preliminary affirmative determination of dumping and injury caused by such dumping.
2. Undertakings cannot be accepted if the Authorized Body considers their acceptance impractical as the number of actual or potential exporters is too great, or for other reasons, including political, and the Authorized Body shall inform the supplier of this reasons.

Article 53. Control over price undertakings

1. The Authorized Body may require any supplier from whom undertakings have been accepted to provide periodically the data relevant to the fulfillment of such price undertakings, and to held verification of pertinent data.
2. In case of violation of undertakings by the supplier, the RK Government upon the proposal of the Authorized Body may take immediately apply ication of provisional measures without notification.

Article 54. Mechanism of undertakings.

1. The Authorized Body has the right to terminate investigation in cases where a supplier fairly implements his undertakings.

2. The Authorized Body may proceed with an anti-dumping investigation upon the acceptance of a price undertaking in order to determine the dumping and injury on its own initiative or on demand of a supplier who accepted price undertakings.

3. A price undertaking shall be removed by the Authorized Body in case no dumping or injury has been found, with exception of cases when such lack of dumping or injury is a result of the price undertaking.

4. Price undertakings shall be effective until the elimination of injury of dumping.

Article 55. Public Notice of the Acceptance of a Price Undertaking.

1. As soon as a price undertaking is accepted adopted, notification shall be sent to all interested parties, providing the provisions of Article 341 of this Law.

2. A price undertaking shall become effective 7 days after it was sent to the respondent or transmitted to the representatives of the interested parties.

Article 51. Assessment of anti-dumping duties.

1. The amount of the anti-dumping duty shall be sufficient for the elimination of the harmful consequence of dumping. The amount of anti-dumping duty shall not exceed the margin of dumping.

2. In case the amount paid in respect of provisional measures imposition is higher than the margin of dumping, the supplier has a right for refund in accordance with legally established procedures.

Article 52. Introduction of anti-dumping duties.

1. Decision on introduction of anti-dumping duties and rate thereof shall be adopted by the RK Government upon the proposal of the Authorized Body and shall be applicable at the date of its publication at least in two mass media editions of Republican circulation. The notice shall contain the relevant information described in Article 41 of this Law, as well as the reasons for the acceptance or rejection of arguments or claims made by the suppliers.

2. In the Resolution of the RK Government on imposition of anti-dumping duties the supplier or suppliers of the dumped product shall be named.

If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, only the supplying country concerned shall be named.

If several suppliers from more than one country are involved, either all the suppliers involved may be named, if this is impracticable, all the supplying countries involved.

3. On the basis of the Resolution of the RK Government on imposition of anti-dumping duties, the Customs Authorities of the RK shall collect them on all imports in respect of which an anti-dumping investigation has been held, except as to the suppliers from which price undertakings have been accepted.

Article 53. Investigation in respect of third parties

1. If after the completion of the anti-dumping investigation third party not related to other suppliers of the product concerned starts exportation of like product an anti-dumping investigation in respect of him, shall be initiated within 30 days and completed no later than 12 months after the receipt of the application.

2. During the anti-dumping investigation, anti-dumping duties shall not be applied in respect of this third party, but provisional anti-dumping measures can be imposed in accordance with the procedures established by this Law.

Article 54. Timeframes determined in the Law

1. No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the anti-dumping investigation.

2. Anti-Dumping duties and provisional measures shall be applied to the products entered for consumption after publication and effectiveness of relevant decisions, with exception of cases stipulated in items 3) and 4) of this Article.

3. Anti-Dumping duties can be imposed from the date of introduction of the provisional measures only in cases that measures have been applied to the concerned product and the Authorized Body have made preliminary affirmative determination of an injury or a threat of injury to the domestic producers.

4. An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures with exception of the products imported before the violation of price undertakings if during anti-dumping investigation it was determined that :

- (a) there is a history of dumping which caused injury;
- (b) the injury, caused by massive dumped imports of a product in a relatively short time is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

In case, there is an evidence on facts, mentioned in items a) and b) of Item 4 of this Article, the Authorized Body shall terminate the anti-dumping investigation and makes affirmative final determination on introduction of anti-dumping duties.

Article 55. Anti-dumping duties eriod of validity

Anti-dumping duties shall be effective not more than five years from its imposition or last reconsideration. Reconsideration of anti-dumping duty shall be provided by the Authorized Body on its own initiative or upon a request made by or on behalf of the domestic producers, within 45 days from the notice of its impending termination. If it will be determined that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the Authorized Body shall appeal before the RK Government to prolong the application of the anti-dumping duty.

CHAPTER 9. FINAL PROVISIONS