

**The Law of the Republic of Kazakhstan**  
**"On subsidies and countervailing measures"**

The current Law determines the main principles of the legislation in respect of import of subsidized product, terms and procedure of investigation conduction and introduction of the countervailing measures.

**CHAPTER 1. GENERAL PROVISION.**

**Article 1. Basic notions.**

"Injury" shall mean material injury or threat of material injury to domestic producers of like products in the Republic of Kazakhstan or significant retardation in organization and expansion of production caused by importation of subsidized products;

"Provisional countervailing measures" - preliminary countervailing measures, applied by the Authorized Body to the supplier of subsidized products in the form of countervailing duties, guaranteed by the pledge liability or cash deposit upon initiation of investigation in respect of subsidized products;

"Interested parties (persons)" shall mean foreign exporter, or producer, or the importer of a product subject to investigation on subsidies or a trade or industrial association, a majority of members of which are exporters, producers, importers of such product, the government of the exporting country, a producer of the like product in the Republic of Kazakhstan or a trade and industrial association the majority of members of which produce like product in Kazakhstan;

"Like product" shall mean a product which is identical or like products:  
-identical products are the products alike in all respects;

"Subsidy" - financial support, provided by the Government or any other state body to the producer or\and exporter ;

"Subsidizing Body" - The Government or any other state body providing subsidies to the producer or\and exporter;

"Investigation in respect of subsidized product importation " - an investigation in respect of supplier of the subsidized product imported to Kazakstan, sales of which causes or threatens to cause injury to domestic producers of like product;

"Subsidized product" - the product imported to Kazakstan, for production or export or transportation of which subsidy was provided.

"The Authorized Body" - state executive body of the Republic of Kazakstan, conducting investigations in respect of facts of subsidized product importation upon an application of interested parties or on its own initiative.

"Related parties" shall mean producers or buyers (participating in the transaction) who are related to the suppliers or are themselves suppliers of the allegedly subsidized product. The transaction participants who legally or actually influence the activity of other party are recognized to be related, specifically if :

- one of the participants (individual) or an official of the participant is at the same time the official of the other participant;
- one of them is under direct or indirect control of the other;
- both of them are directly or indirectly controlled by a third person ;

**Article 2. Sphere of application of the given Law.**

Current Law shall govern the relations arising between the Authorized Body and interested parties and also between different interested parties in connection with injury or threat of injury to domestic producers, as well as to the economic interests of the Republic of Kazakhstan upon importation of subsidized product to the customs territory of the Republic of Kazakhstan for further sales and introduction of countervailing measures.

**Article 3. Goals and principles of the legislation of the RK on subsidies and countervailing measures.**

1. The goal of the legislation of the RK on subsidies and countervailing measures shall be the protection of domestic producers against unfair competition from the side of suppliers of subsidized products and elimination of harmful consequence for the RK economy.
2. Countervailing measures shall be applied only under the condition when the trade practice of suppliers leads to unfair competition.
3. Countervailing measures stipulated by this Law shall be applied under the condition that the investigation procedure was undertaken in accordance with the legislation on subsidies and countervailing measures.

**Article 4. Legislation of the Republic of Kazakhstan on subsidies and countervailing measures.**

1. The current Law, other legal acts and the normative acts of the President and Government of the RK adopted in accordance with them, and also the normative legal acts of the Central executive bodies, adopted in the frames of their competence are recognized as the legislation of the Republic of Kazakhstan on subsidies and countervailing measures
2. If an international treaty or agreement ratified by Kazakhstan establishes other rules than the rules contained in this Law, the rules of the international treaty or agreement shall be applied.

**Chapter 2. SUPERVISION OVER SUBSIDIZED PRODUCT IMPORTS AND COUNTERVAILING MEASURES.**

**Article 5. Organization of supervision over subsidized product import and countervailing measures.**

1. General management of the state supervision over the trade practice of subsidized product suppliers shall be carried out by the Government of the Republic of Kazakhstan in accordance with the legislation on subsidies and countervailing measures.

Direct activity on supervision and conduction of investigation on subsidies and countervailing measures shall be carried out by the Authorized Body, to be determined by the RK Government.

Introduction, revision and termination of countervailing measures shall be implemented by the decision of the RK Government upon the submission of the Authorized Body.

#### **Article 6. The Authorized Body.**

1. The Authorized Body operates within the frames of its authorities, provided by this Law, other normative legal acts and on the basis of a Resolution, adopted by the Government of the Republic of Kazakhstan.
2. In cases, stipulated by this Law, other legislative acts of the President and the Government of the Republic of Kazakhstan, the Authorized Body issues, in the frames of its competence, the normative legal acts on procedures of investigation on subsidized product import and countervailing measures.
3. While implementing its functions, the Authorized Body cooperates with the official bodies of foreign countries and international institutions.

### **CHAPTER 3. DETERMINATION OF SUBSIDIES**

#### **Article 7. Forms of Subsidies Granting**

1. Subsidy - is the financial support of the Government of the country of origin or exportation, of the product imported to the customs territory of the RK in the form of :
  - (a) direct provision of funds (grants, loans, shares purchase) or liabilities (guarantees) undertaken for such funds transfer.

### **Article 9. Criteria of Preferentiality and Specificity of Subsidies**

1. The subsidy shall be deemed to be preferential (specific) for a certain enterprise or industry, being under jurisdiction of the subsidizing body, and are subject to countervailing measures if:

(a) if the granting authority, or the legislation pursuant to which the granting authority acts, restricts an access to a subsidy to all enterprises except certain enterprises.  
a subsidy is limited to certain enterprises located within a designated geographical region  
subsidies contingent, upon the results of export performance or with use of products domestically produced instead of imported, whether solely or as one of several; other conditions.

If the subsidizing authority, or the legislation pursuant to which the subsidizing authority acts, establishes objective criteria or conditions giving the right for all enterprises or industries to obtain the subsidy and such conditions are strictly observed, such subsidies are not recognized to be preferential and are not subject to countervailing measures.

3. In case it is difficult to refer the subsidy to Item 1 or Item 2 of this Article, the following factors shall be taken into account :

- predominant use of the subsidy by certain enterprises;
- granting of disproportionately large amounts of subsidy to certain enterprises;
- directions of subsidies use;
- the frequency with which the applications for a subsidy are refused or approved and the reasons for such decisions;
- number of certain enterprises using the subsidy programs;
- the extent of diversification of the economic activities while providing subsidies.

### **Article 10. Non-countervailing Subsidies.**

The following subsidies shall not be subjected to countervailing measures:

1. Subsidies which are not preferential within the meaning of Article 9 (1)

2. Subsidies which are preferential (specific), within the meaning of Articles 9 (1), but which are used for the following :

(a) Subsidies for research activities conducted by firms or by higher education or research establishments on a contract basis with firms, if the subsidies cover not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to:

- Personnel costs (researchers, technio3 TD.00es l..1264-searchero

(b)Subsidies to disadvantaged regions within the territory of the country of origin or export, allocated pursuant to a general region economic development policy, in this case :

- any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
- export taxes, duties or other charges levied on the export of the product to the Republic of Kazakhstan specifically intended to offset the subsidy.

3. Where the subsidy is provided during production, export or transportation of definite quantity of product, the amount of countervailable subsidy shall be determined by relevant allocation of the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.

4. Where the subsidy is linked with the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, shall be allocated as described in subparagraph (3) of this Article.

### **Article 13. Determination of Negligible Subsidy**

The amount of specific subsidies shall be considered as *de minimis* if such amount is less than 1 per cent of the product value, and in respect of the subsidized product import from the developing countries it shall be not more than 2 per cent of the product value.

## **CHAPTER 4. DETERMINATION OF INJURY**

### **Article 14. Principles for Determination of Injury**

A determination of injury shall be based on positive evidence and involve an objective examination of the volume of subsidized product imports and its effect on prices of like products in the domestic market of Kazakhstan, as well as the consequent impact of these imports on domestic producers of such products.

### **Article 15. Examination of Volume and Prices of the Subsidized Product Import.**

1. During examination with regard to the volume of the subsidized product import, the Authorized Body shall determine whether there has been a significant increase in subsidized product imports, either in absolute terms or relative to production or

#### **Article 16. Determination of Negligible Injury**

The injury shall be regarded as negligible if imports of the subsidized products from that exporting country under consideration represents less than one (1) per cent, and such countries collectively account for less than three (3) per cent of imports of the like product in Kazakhstan.

The volume of imports shall be considered negligible with regard to subsidized product import from developing countries, if it represents less than 4 per cent of the total imports of the like product to the Republic of Kazakhstan, and also under the condition that imports from developing countries whose individual shares of total imports represent less than 4 per cent collectively account for not more than 9 per cent of the total imports of the like product to the Republic of Kazakhstan.

#### **Article 17. Cumulative evaluation**

Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports shall be cumulatively assessed only if it is determined that the amount of countervailable subsidies established in relation to the imports from each country is more than *de minimis* and that the volume of subsidized product import from each country is not negligible and exceed the levels determined in Articles 13 and 16 of this Law.

#### **Article 18. Assessment of Effect of the Subsidized Product Import on Domestic Industry**

1. The examination of the impact of the subsidized product import on the domestic industry shall include an evaluation of all relevant economic factors and indices affecting the state of the domestic industry, including:

- actual and potential decline in sales, profits, output, market share;
- factors affecting prices in the Republic of Kazakhstan;
- actual and potential negative effects on cash flow, inventories, employment, wages, rates of growth, ability to attract investments.

In order to provide comparability in conditions for production of subsidized product import and like product in Kazakhstan and also to exclude the impact of other factors non specified by subsidized product import, the Authorized Body shall examine the domestic production of the like product on the basis of such criteria as the production-technological process, sales of like products by domestic producers and profit received.

If the Authorized Body has not such information in respect of such group of domestic products, the effects of the subsidized product imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

#### **Article 19. Evidence of Injury**

The Authorized Body must prove that the subsidized product imports cause injury to domestic industry and the existence of causal link between volume and level of prices of subsidized product import, determined in accordance with Article 18 and injury alleged to domestic industry determined in accordance with Article 18.

Known factors other than the subsidized product imports which at the same time are injuring the domestic producers shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidized product imports. Factors which may be considered in this respect include,



*inter alia*, the volume and prices of non-subsidized product imports, contraction in demand or changes in the patterns of consumption, restrictive trade practice and competition between domestic and foreign producers, developments in technology and the export performance and productivity of the domestic industry.

#### **Article 20. Injury to Regional Producers**

Provided there is a concentration of the subsidized imports into a separate regional market causing injury to regional producers the Authorized Body has the right to conduct an investigation in accordance with the provisions of this Law in respect of this region.

#### **Article 21. The threat of material injury**

1. A threat of material injury to domestic producers caused by subsidized product import shall be justified by the Authorized Body on the basis of the following indexes analysis :

- (a) The nature of the subsidy in question and the trade effects likely to arise therefrom;
- (b) the rate of subsidized product imports increase in Kazakstani market;
- (c) availability of sufficient export capacities of the exporter or imminent significant increase of export capacities indicating the likelihood of substantially increased subsidized exports. In this case the availability of other export markets to absorb any additional exports shall be taken into account;
- (d) subsidized product imports at prices that would depress prices in the domestic market, and would likely increase demand for further additional import; and
- (e) inventories of the product in country of export and/or production being investigated.

### **CHAPTER 5. INVESTIGATION IN RESPECT OF DETERMINATION OF EXISTENCE, LEVEL AND CONSEQUENCE OF SUBSIDIZED PRODUCT IMPORTS.**

#### **Article 22. Subject of investigation in respect of subsidies and countervailing measures.**

The subject of investigation in respect of subsidies and countervailing measures is subsidized product import to the customs territory of the RK when they cause or threat to cause injury to domestic producers of like products.

During the investigation the Authorized Body

2. The application is considered to be accepted if the Authorized Body recognizes the evidence provided to be sufficient and notifies the applicant in written form.

When the Authorized Body considers that the information is insufficient, it shall notify the applicant within 10 days and afford the applicant the possibility to revise or supplement the application.

When the applicant revises or amends its application, the time for assessment shall apply as of the date of receiving the revised or amended application.

4. For the initiation of the investigation on behalf of the application of domestic producers it is obligatorily required that the Authorized Body shall determine that the collective output of those, expressing support for it constitutes more than 50 per cent of the total production of the like product by the domestic producers expressing their opinion on this application. The share of product produced by domestic producers supporting an application should not account for less than 25 per cent of total production of the like product.

**Article 24. Initiation of the investigation without an application, on the initiative of the Authorized Body.**

Shall Authorized Body has sufficient evidence of existence of the preferential (specific) subsidies, injury alleged by importation of subsidized product and the causal link thereof, an Authorized Body may take a decision on initiation an investigation without having received written application, on its own initiative.

**Article 25. Grounds for refusal of initiation of an investigation in respect of subsidized product import.**

The Authorized Body shall take a decision about refusal to initiate investigation if it will be determined that the amount of subsidy is negligible in accordance with Article 13 and the volume of subsidized import is negligible in accordance with Article 16 of this Law.

**Article 26. Withdrawal of the application made on behalf of domestic industry.**

Any application may be withdrawn by an applicant prior to initiation of investigation. In the case if the application has been withdrawn prior to initiation of investigation, it shall be considered as being not submitted. If an application is withdrawn in

2. After the decision on initiation of investigation has been made, the Authorized Body shall:
  - notify all interested parties about initiation of an investigation, and also the Government of the country of export or\and origin of subsidized product;
  - publish such notification in official mass media;

3. A public notice of initiation of an investigation shall contain information as follows:
  - the date of initiation of investigation
  - the name of the Authorized Body conducting an investigation;
  - the name of the country of export or\and origin of the subsidized product subject to investigation;
  - the grounds for determination of the subsidized product import existence;
  - a summary of the evidences on which the allegation of injury is based;
  - the time-limits within which interested parties shall apply for access to the file and make their opinion known and request a meeting of the interested parties

## **CHAPTER 6. CONDUCT OF INVESTIGATION**

### **Article 29. Request for Information.**

1. After the initiation of investigation the Authorized Body shall forward requests to the interests parties.

The interested parties shall have 30 days for preparation of responses to the questions. This term may be extended, but not more than for 30 days. The request shall be considered as being received within one week after it has been sent by mail or delivered to the representative of the interested party.

In the process of investigation, the Authorized Body may require additional information from the interested parties, as well as set up a term to which the response shall be given.

2. Each interested party shall have a right to submit any other evidences in the written form, which it considers to be necessary.
3. If any interested party shall not provide the required information within period of time determined by the Authorized Body or otherwise impedes the process of investigation in respect of subsidized product import, the Authorized Body shall be entitled to make a decision on the basis of information available.

### **Article 29. On Site Examination and Timing of Investigation.**

1. With the exception of the circumstances stipulated in Article 30 of this Law the reliability of the information provided by the interested parties and which is the basis for the conclusions made as the results of examination shall be checked.

2. With the purpose of checking the reliability of the information or obtaining the additional data, with an agreement of the parties involved into investigation and having no objections from the side of official bodies of the country or the countries involved into investigation, the Authorized Body may conduct an investigation within the territory of these countries. The investigations within the territory of other WTO countries shall be conducted in accordance with the established procedures.







5. A price undertaking may not be accepted if the Authorized Body considers the acceptance impractical if a number of suppliers is too great or due to other reasons. The Authorized Body shall inform the supplier about such reasons.

**Article 39. Control over Carrying out Price Undertakings.**

1. The Authorized Body shall be entitled to demand from a supplier, whose price undertakings have been accepted, to submit data on carrying out the accepted price undertakings, as well as to check reliability of the submitted data.

2. In case of violation of the accepted price undertakings by a supplier, the Authorized Body shall be entitled to impose the provisional measures immediately, without notification.

**Article 40. Application of Undertakings.**

1. The Authorized Body shall be entitled to terminate an investigation in the case of fair fulfillment of undertakings entered into by a supplier.

2. The Authorized Body shall proceed with the (of )-142.1( )Ir w1(i.Be )5.49.1749Cndertaki.5(Aut0 9lier, 1N991

#### **Article 42. Imposition of countervailing duties.**

1. Decision on introduction of countervailing 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. The publication shall contain the relevant information in accordance with Article 37 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 countervailing duties the supplier or suppliers of the subsidized 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 countervailing duties, the Customs Authorities of the RK shall collect them from all imports in respect of which an investigation has been held, except as to the suppliers from which price undertakings have been accepted.

#### **Article 43. Imposition of countervailing duties while using selectivity**

If the Authorized Body limits the investigation in accordance with Art. 30, any countervailing duty applied to subsidized product import, exporters or producers of which provided information on themselves in accordance with Art. 28, but were not included in examination shall not exceed weighted average amount of countervailing duty, determined in respect of exporters or producers included into examination.

#### **Article 44. Retroactivity.**

1. Provisional measures and countervailing duties shall be applied to the products released for circulation into the customs territory of the RK after effectiveness of the Resolution of the RK Government in accordance with Article 5, except in cases, indicated in p. 2 and 5 of this Article.

2. Countervailing duties shall be applied from the date of introduction of provisional measures, if those measures were introduced by the relevant decision of the RK Government.

3. If an amount of final countervailing duty is higher than the amount of provisional countervailing duty the difference shall not be paid, and if it is less - the difference shall be reimbursed to a supplier in accordance with legally established procedure.

4. If the Authorized Body has made final negative determination on existence of preferential (specific) subsidy and injury to domestic industry, any cash deposit and pledge liability made in period of imposition of provisional countervailing measures shall be refunded to a supplier in accordance with legally established procedure.



5. When the Authorized Body determines that it is difficult to recover the injury alleged to domestic industry by subsidized product import, countervailing duties may be imposed in respect of the products, issued in circulation ninety days before the date of introduction of provisional countervailing measures.

## **CHAPTER 10. PERIOD OF VALIDITY, REVISION AND REFUNDING OF COUNTERVAILING DUTIES.**

### **Article 45. The main principles, period of validity and revision of countervailing duties.**

1. The countervailing duties shall be valid during the time period and in the volume sufficient for neutralization of countervailable subsidies causing injury.
2. The countervailing duties shall be effective not more than five years from its imposition or last reconsideration. Such reconsideration shall start upon the initiative of the Authorized Body or upon a request made by the interested parties.
3. The Authorized Body shall publish in official mass media the notification on impending termination of imposition of countervailing duties, six months prior to its expiration.
4. Procedure of preparation of countervailing duty reconsideration shall be provided by the Authorized Body on its own initiative or upon the request of the interested persons, provided not later than three months prior to expiration of the countervailing duty period of validity.
5. If it will be determined that the expire of the duty would be likely to lead to continuation or recurrence of harmful consequence, the Authorized Body shall appeal before the RK Government to prolong the application of the countervailing duties imposed earlier.

### **Article 46. Early revision.**

In one year from the date of imposition of countervailing duties, upon justified appellation of the interested parties in respect of their increase, decrease or elimination, the Authorized Body is entitled to make a decision on early revision of countervailing duties.

### **Article 47. Determination of the individual amount of countervailing duty in respect of the suppliers not involved into investigation**

Upon the request of the supplier of the product to which the final countervailing duty is applied, but in respect of which no individual investigation has been conducted, with the exception of the cases of refuse to cooperate during investigation, the Authorized Body determines the individual amount of the countervailing duty.

### **Article 48. Investigation methods during the revision of countervailing duties.**

During the process of revision of countervailing duties in accordance with Articles 45, 46, 47 of this Law the Authorized Body shall use the methods which were applied during the process of investigation and introduction of effective duties.

**Article 49. Customs clearance**

An investigation in respect of subsidized product import shall not hinder the procedures of customs clearance.

**Article 50. Registration of subsidized product import by customs authorities.**

1. After initiation of the investigation in respect of subsidized product import upon the submission of the Authorized Body, Customs Authorities shall register the subsidized product import, so that in future the countervailing duties can be applied in respect of these imports.
2. The Customs Authorities shall inform the Authorized Body on import of products, in respect of which the investigation is conducted, on monthly basis

**Article 51. Appellation procedure**

Any actions and decisions made during the investigation in respect of subsidized product import can be appealed by interested parties in court.

The President of the Republic of Kazakhstan  
N. Nazarbaev