

ANNEX XV

- 5) import quota - restriction of a product import to the territory of the Republic of Kazakhstan in respect of its quantity and (or) value;
- 6) import of a product during previous period – average value of a product import during three preceding years for which statistics are available;
- 7) confidential information – information which disclosure may give considerable advantages to the competitors, or may entail substantial adverse effects for an interested party which produced that information;

Sub-paragraph 8 is stated in the wording of the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

- 8) domestic industry (domestic producers) - aggregate of producers of like or directly competitive products operating within the territory of the Republic of Kazakhstan, or of producers whose collective output of like or directly competitive products makes a major portion of the total production of the given products within the territory of the Republic of Kazakhstan;

Sub-paragraph 9 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

- 9) like or directly competitive product – a product classified under the same code in the foreign economic activity commodity nomenclature and completely identical to the other product or comparable thereto in respect of its functional intention, use, qualitative and technical characteristics as well as of other key properties in such a way that a consumer substitutes or is ready to substitute the other product with such a product in the course of consumption;
- 10) investigation – procedure of examination of documents and other evidence regarding import to the territory of the Republic of Kazakhstan of any product in such quantities and under such conditions which may cause serious injury or threat thereof to the domestic producers of the like or directly competitive product;

Sub-paragraph 11 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

- 11) serious injury – significant general impairment in the position of a domestic production of a like or directly competitive product in the Republic of Kazakhstan as a result of increased volume of supply to the territory of the Republic of Kazakhstan showing itself, in particular, by reduction of output of such products, decrease of sales of a domestic product on the domestic market of the Republic of Kazakhstan, decrease of profitability of production of such product, negative impact on employment situation, salary level;

Sub-paragraph 12 is stated in the wording of the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

- 12) threat of serious injury – clear imminence of significant injury;
- 13) authorized body –state body of the Republic of Kazakhstan monitoring trading and production activities, carrying out investigation in respect of determining availability of a serious injury or a threat of its infliction and of the need in application of the safeguard measures.

Article 2. Laws of the Republic of Kazakhstan on safeguard measures of domestic market when importing products

1. The Laws of the Republic of Kazakhstan on safeguard measures of the domestic market when importing products shall include this Law and other statutory legal acts.
2. When an international agreement or a treaty ratified by the Republic of Kazakhstan stipulates for the rules other than those containing in this Law the rules of such international treaty or agreement shall prevail.

In sub-paragraphs 1 and 2 of Article 3 the word “customs” was removed in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

Article 3. Purposes of this Law

1. The purposes of this Law shall be safeguarding interests of domestic producers of a product and elimination of serious injury or a threat thereof in view of the increased supply of product into the territory of the Republic of Kazakhstan.
2. Safeguard measures shall be applied only under circumstances of infliction of serious injury or threat thereof to the domestic producers as result of the increased volumes of supply of products into the territory of the Republic of Kazakhstan.
3. Safeguard measures shall be applied provided that the conditions that the investigation was carried out in accordance with the rules and procedures established in this Law.
4. Safeguard measures shall be applied to the imported products on a non-discriminatory basis irrespective of the country

Article 6 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

Article 6. Authorized body

1. The authorized body shall operate within the framework of the authorities given to it by this Law and the other statutory legal acts of the Republic of Kazakhstan.
2. In cases stipulated by this Law and the other statutory legal acts of the Republic of Kazakhstan the authorized body shall issue, within the scope of its reference, the statutory legal acts in respect of investigation procedures, carry out investigation upon requests of a domestic producer or an association of producers, prepare materials for submission to the Government of the Republic of Kazakhstan to apply safeguard measures.
3. The state bodies and other organizations shall assist in the investigations and provide samples of products on the recovery basis and required information, including confidential information, upon request of the authorized body.

Article 7. Decision on initiating an investigation

1. The decision on initiating an investigation shall be made by the authorized body on the instructions of the Government of the Republic of Kazakhstan as well as on the grounds of a conclusion of the authorized body which was prepared upon request of a domestic producer or an association of producers.

Paragraph 2 of Article 7 is stated in the wording of the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I; amended in accordance with the Law of the Republic of Kazakhstan of 16.006.05 No. 59-III.

2. A request to carry out the investigation prior to the application of the safeguard measures may be accepted for consideration if the share of the domestic producers of the product who expressed their views in respect of the given request makes up the majority of the total volume of production of a like or directly competitive product in the Republic of Kazakhstan.

At that, the share of the domestic producers who supported the request shall make up more than twenty-five percent of the volume of a like or directly competitive product produced by the domestic producers.

3. After making the decision on initiating the investigation the authorized body shall notify a respective foreign country (union of foreign countries) of the intention to initiate the investigation with the purpose of possible application of the safeguard measures.

See: Rules of carrying out investigation preceding the application of the safeguard, countervailing or antidumping measures.

Article 8. Submission of request

1. A request for investigation shall be submitted in written form to the authorized body and shall include the following data:

- 1) details of the applicant and data on the cost and volume of production of a like or directly competitive product during three preceding years for which statistics are available;
- 2) description of imported product subject to investigation, name of a country or countries of origin, list of known suppliers of the given product;

Sub-paragraph 3) of paragraph 1 was added with words in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

- 3) data reflecting all relevant factors of an objective and quantifiable nature which are influencing the situation in this industry, in particular: changes in the level of sales, production, productivity, capacity utilization, profits and losses, reduction of the number of employees in the industry; information on changes in price for the like or directly competitive products in the domestic market of the Republic of Kazakhstan.
2. A request may be withdrawn by the applicant before the initiation of the investigation and in that case it shall be considered as not submitted.
 3. The applicant shall bear responsibility for the reliability of the information stated in the request.

Article 9 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

Article 9. Consideration of request

1. The authorized body shall, within forty-five calendar days after submission of a request, consider the reliability and sufficiencies of the data stated in the request and prepare a conclusion with respect to investigation advisability or denial of investigation.
2. If the authorized body shall consider the data as insufficient it shall, within ten days after receipt of the request, notify the applicant about that and provide for the opportunity to amend or supplement the request.
In case when the applicant sends information to supplement or amend the previous request the date of receiving of such request for consideration shall be the date of registration of the aforesaid supplements or amendments in the authorized body.
3. The authorized body shall make a decision of denial of investigation in such case when there is no sufficient evidence of a serious damage or a threat thereof to the domestic producers of the like or directly competitive products, as well as in case of failure to fulfill the terms of paragraph 2, Article 7 of this Law.
4. Within ten days from the date of making decision of denial of investigation the authorized body shall notify the applicant accordingly stating the reasons and grounds of such denial.

See: Rules of carrying out investigation preceding the application of the safeguard, countervailing or antidumping measures.

Article 10. Initiating of investigation

Paragraph 1 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

1. The authorized body shall, within thirty calendar days from the date of making decision of initiating the investigations, notify the interested persons on the forthcoming investigation and shall publish such notification in mass media in the official and other languages with a view to involve all interested parties to the investigation.

- 2.

Article 12. Request for information

Paragraph 1 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

1. After initiating the investigation the authorized body shall be entitled when necessary to request for additional information from the interested persons and to set out the deadline for response.

Paragraph 2 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

2. Each interested party shall have a right, when sending information within the time frame as stated by the authorized body, to produce any other evidences which may be deemed necessary by such party.

Article 13. Confidential information

1. The confidential information submitted to the authorized body in the course of the investigation shall not be divulged without written approval of the interested parties.

Paragraph 2 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

2. The interested parties presenting confidential information shall submit written explanations regarding the information.
The explanations should be sufficiently detailed so as to understand the essence of the information or explain the reasons which prevent from submission of more detailed non-confidential information.
The authorized body may give no account to the information, which an interested party is not

In paragraph 3 of Article 14 the words were replaced in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I.

3. The authorized body shall publish a report on each investigation in the official publications. The report shall include a detailed analysis of the case with grounds of the resolution adopted by the Government of the Republic of Kazakhstan.

4. On the basis of the factual data obtained in the course of the investigation the authorized body has a right to issue a preliminary conclusion in respect of the presence of the increased supply of products and the serious injury or a threat thereof to the domestic producers.

Article 17 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

Article 17. Application of temporary safeguard measures

1. The Government of the Republic of Kazakhstan on the basis of a preliminary approving conclusion of the authorized body shall issue a resolution about application of temporary safeguard measures provided that the investigation is simultaneously continued.
2. The temporary safeguard measures shall be applied in critical circumstances if their delay may inflict serious injury to domestic industry, which would be difficult to recover.
3. The temporary safeguard measures shall be applied by the customs authorities on the basis of the resolution of the Government of the Republic of Kazakhstan about application of such measures in respect of products concerned.

The Article was added with paragraph 3-1 in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

3-1. Funds for the security of payment of safeguard duties at application of the temporary safeguard measures shall be paid in by importers pursuant to the customs legislation of the Republic of Kazakhstan to a deposit account and shall not be transferred to the budget before the Government of the Republic of Kazakhstan takes the final decision on the basis of the conclusion of the authorized body about the need to apply safeguard measures.

Paragraph 4 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III

4. In case when the authorized body according to the results of the investigation takes a decision that the increased import does not cause serious injury or threat thereof to the domestic producers, the temporary safeguard measures shall be removed and the importer shall have the right to reimbursement of the deposited amount in accordance with the procedure stipulated by the legislation of the Republic of Kazakhstan. In case when it is declared to be expedient to apply a lower rate of safeguard duty as compared to the rate of a safeguard duty at application of the safeguard measures, the funds paid in excess shall be returned to the importer in accordance with the procedure established by the customs legislation of the Republic of Kazakhstan.
5. In case when the rate of a safeguard duty is higher than the rate of the temporary safeguard measure the difference for the paid-up period shall not be collected from the importer.

Article 18 is stated in the wording of the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I

Article 18. Publishing of the resolution of the Government of the Republic of Kazakhstan about application of the temporary safeguard measures

The resolution of the Government of the Republic of Kazakhstan about the introduction of the temporary safeguard measures shall be published in the official publications.

The published notice shall include the terms and the grounds of the application of the temporary safeguard measures.

Article 19. Duration of temporary safeguard measures

1. The duration of the temporary safeguard measures shall not exceed 200 days.
2. The duration of the temporary safeguard measures shall be included into the total duration of the safeguard measures in accordance with Article 24 of this Law.

Article 20. Completion of investigation

An investigation carried out by the authorized body shall be concluded by preparation of a conclusion to be communicated to the Government of the Republic of Kazakhstan in respect of:

- 1) termination of the investigation in view of the lack of sufficient demonstration of serious injury of threat thereof to the domestic producers because of supply of a product which was under investigation;
- 2) determination of the existence of serious injury or threat thereof by the increased volume of import to the product of the domestic industry and the need to apply the safeguard measures from the part of the Government of the Republic of Kazakhstan.

Article 21. Safeguard measures

Paragraph 1 of Article 21 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I.

1. The resolution of the Government of the Republic of Kazakhstan about application of the safeguard measures shall be adopted upon the proposal and on the grounds of conclusion of the authorized body and shall take effect from the date of its publication in the official publications.
2. The safeguard measures shall be applied in the form of restriction of product supply, i.e. establishment of a quota and (or) application of a safeguard duty.

Article 22. Determination of extents of safeguard measures

Paragraph 1 is stated in the wording of the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

1. Safeguard measures shall be applied to the extent necessary to prevent or remedy serious injury.

Paragraph 2 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

2. The extent of safeguard measures may not be increased during the total period of their application. Their extent may be reduced by resolution of the Government of the Republic of Kazakhstan by petition of the authorized body at regular intervals within the application period when the duration of the safeguard measure exceeds one year.

Paragraph 3 of Article 22 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I.

3. If the duration of a safeguard measure exceeds three years, a repeated investigation shall be carried out within one and a half year period after the introduction of the measure, as a result of such repeated investigation the safeguard measures may be removed, changed or extended.
4. In case of extension of the duration of the safeguard measures as a result of the repeated investigation the conditions of application of such measures shall not be more restrictive than it was during the initial period of application of the safeguard measures.

Article 23. Application of safeguard measures

Paragraph 1 of Article 22 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

1. Based on the resolution of the Government of the Republic of Kazakhstan about application of the safeguard duties the customs authorities shall collect them from all imported product under investigation. The safeguard duties shall be collected irrespective of any customs duties, taxes and other compulsory payments to the budget and shall be passed to the budget.

Paragraph 2 was amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

2. When the safeguard measures are applied in the form of a quota the annual amount of import quota shall not reduce import below the level equal to its average volume during a previous period, except for cases when the need to take other decision in order to prevent or remedy serious injury is proved.

Within the limits of the annual amount of import quota introduced as a safeguard measure the Government of the Republic of Kazakhstan may establish import quotas for individual countries.

In cases when an import quota is allocated among supplying countries, the Government of the Republic of Kazakhstan by means of consultations may provide for agreement with respect to the allocation of shares in the import quota with all other supplying countries having an interest in supplying the product concerned into the territory of the Republic of Kazakhstan.

When it is impossible to reach such an agreement, the Government of the Republic of Kazakhstan shall allocate the import quota among supplying countries in the proportion, corresponding to the import of the product during the preceding period, based on the total quantity or value of the product. At that due account being taken of any special factors which may have affected or may be affecting the supply of this product.

In case of need the Government of the Republic of Kazakhstan may allot the import quota among individual supplying countries taking account of absolute and relative indices of increase of import from individual foreign countries (union of foreign countries).

Article 24 was amended in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I.

Article 24. Duration of safeguard measures

1. The duration of safeguard measures shall be established only for such period of time as may be necessary to prevent or remedy serious injury and adaptation of the domestic producers of products to the competitive conditions. This period shall not exceed four years, unless it is extended under paragraph 2 of this Article.
2. The duration of safeguard measures may be extended by the Government of the Republic of Kazakhstan on the basis of a pe

Article 27 is stated in the wording of the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I.

Article 27. Order of appeal of decisions

The interested parties may appeal the decisions and actions of the authorized body taken in the course of the investigation in respect of application of safeguard measures in accordance with the laws of the Republic of Kazakhstan in legal form.

The Law was added with Article 28 in accordance with the Law of the Republic of Kazakhstan of 20.07.99 No. 443-I; amended in accordance with the Law of the Republic of Kazakhstan of 16.06.05 No. 59-III.

Article 28. Liability for violation of the legislation on safeguard measures of the domestic market when importing products

Liability for violation of the legislation on safeguard measures of the domestic market at import of products shall be incurred in accordance with the Laws of the Republic of Kazakhstan.

President of the Republic of Kazakhstan
N. Nazarbayev