

LAW OF UKRAINE

ON SPECIAL MEASURES IN REGARD TO IMPORTS IN UKRAINE

(Changed and amended according to Law of Ukraine

#1595-III of March 23, 2000;

#663-IV (663-15) of April 03, 2003;

#860-IV (860-15) of May 22, 2003)

(Throughout the text hereof, the words "Ministry of Economy of Ukraine" in all cases have been replaced with the words "central economic policy executive agency" according to Law of Ukraine #860-IV (8601-15) of May 22, 2003)

In order to introduce mechanisms protecting the interests of national producers, this Law regulates the principles and procedures of special investigation into increased imports from other countries, customs unions or economic groups causing extensive damage or threatening extensive damage, which findings may warrant special measures.

Chapter I. General Provisions

Article 1.

DEFINITIONS

- (1) directly competitive commodity: commodity being directly competitive with regard to the commodity subject to special investigation;
- (2) exporter: business entity exporting goods (services);¹
- (3) threat of extensive damage: imminent danger of extensive damage to a national producer;
- (4) interested party: any person notifying the central economic policy executive agency (hereinafter referred to as the Ministry) of his/their being interested in participating in a special investigation, as per Section 2, Article 9 hereunder, and who takes an active part in such special investigation by supplying evidence or other

1. In case growing import trends in Ukraine are likely

- evidence contained in the statement or any such unbiased information as may be available to the Commission, concerning import growth in Ukraine and extensive damage or threat of extensive damage to the national producer as a result of such imports.

If in the course of such consideration the Commission determines that there is enough evidence of such growing imports in Ukraine and that this may cause or threatens extensive damage to the national producer, the Commission shall decide on the commencement of a special investigation and shall instruct the Ministry to carry it out and announce the commencement in the newspaper. The Commission shall pass this decision by a simple majority of votes.

If the Commission determines that the evidence does not suffice to warrant such investigation, it shall pass a decision on its inexpedience and instruct the Ministry to notify the Service and relevant executive authority or the national producer. This decision shall be passed by two-thirds of the votes (special majority).

A decision on the commencement or inexpedience of a special investigation shall be made by the Commission within 30 days from the date on which the Ministry received the statement or information as per Articles 5 and 6 hereinbefore.

2. The Ministry shall commence investigation and shall, within five days from the date of the Commission's decision as per Section 1 of this Article 9, have an appropriate ad carried by the newspaper. This ad shall contain:

- (1) information on the commencement of a special investigation;
- (2) information on the goods whose imports are subject to special investigation;
- (3) list of interested countries of origin and/or exporting countries;
- (4) summary (hereinafter referred to as resume) of information warranting special investigation;
- (5) invitation to contribute useful relevant information to the Ministry;³
- (6) time-limits within which the interested parties may:
 - submit commentaries in writing and other required (114 0-1012(time-limits within which tng and othespau0 TD.00 Tc0

If information requested by the Ministry is not supplied within the time-limit determined by this Law or by the Ministry in keeping with this Law, or if there emerge serious obstacles in carrying out a special investigation, the Ministry shall rely in its findings on the factual data available. The Ministry shall submit the said findings to the Commission.

8. The Commission, proceeding from

- (1) the trends of the import into Ukraine, which is under investigation, for instance, the increase in the volume of the import and/or conditions of effecting such import; (*Item (1) in the wording of Law of Ukraine #663-IV (663-15) of April 03, 2003*)
- (2) fact(s) of extensive damage resulting from such imports and/or a threat thereof with regard to the national producer;
- (3) causal connection between growing imports and/or factors causing it, and extensive damage and/or a threat thereof.

2. In the course of such investigation the following facts shall be studied:

- (1) imports in Ukraine with regard to certain goods, provided they register considerable growth in the course of investigation, in terms of ratio or absolute value compared to similar or directly compatible goods being

Basic delivery terms shall be determined in accordance with INCOTERMS, in the wording effective on the date of importation in Ukraine.

If the goods at issue have specific consumer characteristics or if a specific situation develops on the Ukrainian market, information indicated in Paragraph 1 of this Section 8 may be supplied within different time-limits determined by the Commission as submitted by the Ministry.

The said information shall specify the goods and the country of origin. Other information may also be provided if so resolved by the Commission.

Article 15.

- (3) the institution of the special duty for the import into Ukraine, which is the object of the special investigation. (*Item (3) added to the Article according to Law of Ukraine #663-IV (663-15) of April 03, 2003*)
2. The special duty instituted by the Commission shall be paid by the importer of commodities into Ukraine regardless of other taxes and duties (statuto

concerning the conformity of such special measures to the national interests, which opinion shall be taken into account by the Commission when deliberating and making its decision.

This information — or a resume — may be transferred by the Ministry to other parties indicated in this Article 17 and they may, in turn, submit their views.

3. The interested parties may request the Ministry to stage hearings. Such requests shall be granted if submitted to the Ministry in writing, within the time-limits stated in the special investigation notice, and if they cite special reasons for such hearings from the standpoint of national interests.

4. The Ministry shall analyse such information, submitted as per Section 2 of this Article 17, and determine to what extent this information is exponential [demonstrative]. The results of this deliberation and findings on its motivation shall be submitted to the Commission. The Ministry shall allow for a resume of the Commission's findings made at a sitting thereof, when filing its proposals with the Commission under this Law.

Information submitted in accordance with this Article 17 shall be taken into account provided it is supported by evidence attesting to its undeniableness.

Article 18.

Term of Application of Special Measures

1. Special measures shall be applied over a certain period making it possible to prevent extensive damage or reimburse such extensive damage to the national producer; also to enable the national producer to restore his/their status on a given market. This period shall not exceed four years, including the term of application of supervisory measures. The said period shall not exceed four years, including the term of

- (1) at least a year has elapsed since such special measures started being applied to such imports in Ukraine;
- (2) special measures were applied to such imports not more than twice over the five years preceding the date of their repeated enactment.

2. A decision on a repeated application of special measures shall be passed by the Commission by a qualified majority of votes. Such repeated special measures may be applied to goods imported to Ukraine for a term of up to 180 days. The Ministry shall publish an ad on this decision of the Commission in the newspaper.

Article 21.

Application of Special Measures to Goods

Imported from Developing Countries Members of WTO

Special measures shall not be applied to goods imported to Ukraine from developing countries that are members of the WTO provided the aggregate share of these goods in overall imports does not exceed 9%. (*The Article changed and amended according to Law of Ukraine #663-IV (663-15) of April 03, 2003*)

CHAPTER