

Draft
submitted by People's Deputy of Ukraine
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to alter the already submitted draft
registration No. 7117

LAW OF UKRAINE
On Amendment of the Law of Ukraine
„On Safeguards of the National Industry against Dumped Imports”
(regarding procedural issues of an anti-dumping investigation)

The Verkhovna Rada of Ukraine hereby resolves:

I. To introduce the following changes to the Law of Ukraine „**On Safeguards of the National Industry against Dumped Imports**”

” (Bulletin of the Verkhovna Rada of Ukraine, 1999, No. 9-10, Article 65; 2000, No. 24, Article 186; 2003, No. 37, Article 300):

1. In paragraphs 2, 5, 10, 13 of part I of Article 1, the words “Ukraine” and “into Ukraine” shall be replaced, respectively, with words “importing country” and “into importing country.”

2. A paragraph shall be added to Article 1 with the following content:

28) an anti-dumping process shall be the procedure for consideration and settlement of anti-dumping cases. An anti-dumping process shall be divided into two stages – an anti-dumping procedure and an anti-dumping investigation. An anti-dumping process shall start from the date of applicant's submitting a complaint in

accordance with parts 1-3 of Article 12 of this Law, and end on the day of publishing one of the following notifications of:

refusing the applicant to launch an anti-dumping investigation and a discontinuance of the anti-dumping procedure;

annulling the decision to launch an anti-dumping investigation;

suspending the antidumping investigation;

a negative opinion regarding the existence of dumping (harm) which results in a discontinuance of an anti-dumping procedure;

annulling the decision of the Commission to levy the anti-dumping duty;

of

stopping the investigation suspended in accordance with Article 15 of this Law.

3. Part three of Article 7 shall be worded as follows:

„3. Pricing between associated entities (between controlling and controlled parties) or parties entering into a countervailing agreement may not be considered prices prevailing in ordinary trade transactions and may not be used in determining normal value, unless it is established that

„When the Ministry approves the decision on the issue specified in paragraph 2 of part two of the present Article, more than one factor specified in this part shall be considered.”

7. In part ten of Article 10 the word “existence” shall be replaced with “availability.”

8. Part ten of Article 10 shall be worded as follows:

„When the Ministry approves the decision to the effect that further dumping exports to Ukraine from the exporting country (exporting countries) is unavoidable and would do material harm unless preventive measures are applied, all factors mentioned in part ten of this Article shall be considered in aggregate.”

9. Part nine of Article 12 shall be worded as follows:

„9. During the anti-dumping procedure the Ministry shall consider evidence of dumping contained in the complaint, evaluate its sufficiency and justification to decide on launching an anti-dumping investigation or refusing to launch it.

If during the anti-dumping procedure the Ministry should establish that the proof of dumping, harm or cause and effect relationship between those is not sufficient to justify the continuation of the anti-dumping procedure, in particular, that the actual or potential volume of dumping imports is insufficient or the dumping margin is minimum, the complaint lodged by the applicant in accordance with parts one-three of this Article shall be dismissed and the Ministry shall recommend it to the Commission that the latter approve a decision to dismiss the application to launch an anti-dumping investigation.

A dumping margin is considered minimal where it is less than two per cent of the export price.

Actual or potential volume of dumping imports would normally be considered insignificant if they constitute less than three per cent of similar imports into Ukraine, unless imports from export countries, each country providing less than three per cent of similar imports into Ukraine, taken together, exceed seven per cent.

As regards imports from a developing WTO Member, anti-dumping measures shall not be applied provided that actual or potential volume of imports from this country is less than four per cent of the overall imports of similar goods from exporting countries. However, this rule shall not apply if aggregate shares of exporting countries, whose individual shares are less than four per cent, exceed nine per cent of the overall imports to Ukraine.

Lists of developing WTO Members are provided as attachments 5 and 6 to the Law of Ukraine “On Protecting Domestic Producers Against Subsidized Imports.”

10. Passage one of part ten of Artic

2) no later than 60 days after the date of this decision

decision by a simple majority vote to apply anti-dumping measures. This decision of the Commission would charge the following entities with the following tasks:

tigation, export prices shall be calculated again in accordance with Article 8 of this Law as well as dumping margins to take

In case of an anti-dumping duty evasion, payment of the anti-dumping duty not exceeding the residual anti-dumping duty introduced in accordance with part six of Article 16 of this Law, may cover imports by companies benefiting from the introduction of individual anti-dumping duty rates applicable to imports from the countries covered by anti-dumping measures.

Anti-dumping duty evasion shall mean changes in the structure of trade between third countries and Ukraine or between individual companies of the exporting country covered by anti-dumping measures, and Ukraine arising out of the practice, transactions, agreements, processing or works that are not sufficiently justified or lack an economic basic, except where an anti-dumping duty has been imposed based on evidence of a harmful impact of the anti-dumping measures on prices and/ or volume of similar goods and proof, if necessary, in accordance with provisions of Articles 7-9 of this Law, that dumping is present in connection with normal values that had been previously established for such goods.

The said practice, transactions, agreements, processing or works include, in particular:

- 1) insignificant changes made to the goods under review so that they become eligible for customs codes of other goods, normally, not covered by anti-dumping measures since these changes do not affect essential characteristics of the goods under review;
- 2) sending goods covered by anti-dumping measures to Ukraine via third countries;
- 3) a reorganization by exporters or foreign producers of their sales structures and channels in the exporting country covered by anti-dumping measures so that in the final count goods are exported in Ukraine using intermediary services of foreign producers benefiting from the introduction of individual anti-dumping duty rates that are lower than the anti-dumping duty rate applied to foreign producers' goods coming from the exporting country covered by anti-dumping measures; and
- 4) transactions of assembly of a certain good from components in Ukraine or other country."

20. Parts three and four of Article 27 shall be worded as follows:

„3. In case an interested person (an applicant in an anti-dumping investigation or an executive authority of Ukraine) believe that anti-dumping duty evasion is occurring, this person shall submit a complaint to the Ministry containing sufficient proof of the facts specified in part one and (or) two of this Article.

Based on the complaint lodged in accordance with passage one of this part and pursuant to the relevant decision of the Commission, the Ministry shall con-

duct an anti-dumping investigation of the anti-dumping duty evasion. In this case, the Commission shall instruct the Ministry as follows:

an obligatory registration in accordance with part four of Article 28 of this Law of contracts under which imports to Ukraine are carried out;

or

the supplier shall deposit a relevant amount. The deposit may be made at the location of the customs authorities that perform customs clearance of the goods that are subject to the said anti-du

Subject to conditions specified in Article 21 of this Law, exemptions may be also granted in the process of anti-dumping measures review to determine the individual size of dumping margins for new exporters or producers.

If the number of parties that request or may request tax exemptions is significant, the Commission acting pursuant to the proposal from the Ministry may, if at least one year has passed since it approved the decision on the extension of anti-dumping measures, approve the decision to launch an interim review of this extension. Any such review shall be conducted in accordance with Chapter V of this Law.”

21. In part three of Article 28 after the words “may be” the following words shall be added: “pursuant to the proposal from the Ministry”; the words “temporarily changes as follows,” “goods producer, were considered,” “unjustified” shall be replaced with words “in the market of Ukraine got temporarily changed as follows,” “goods producer to the Ministry, were taken into consideration,” “unjustified.”

22. Article 28 shall be supplemented with part seven with the following content:

„7. Without harm to part six of this Article, the Commission may require executive authorities of Ukraine in each individual case to submit information necessary in accordance with this Article for effective control over anti-dumping measures and control over activities of importers, sellers and Ukrainian producers. In this event, provisions of parts four and five of Article 13. Any data supplied by member-states in accordance with this Article shall be subject to the provisions of part six of Article 32.”

23 In part three of Article 30 the words “decision regarding” shall be replaced with the words “decision about.”

24. Part six of Article 32 shall have the following wording:

„6. Information received in accordance with this Law shall be used only for the purposes for which it is being requested. This provision does not exclude the use of information received in the process of one anti-dumping investigation for the purposes of launching other anti-dumping investigations as part of one and the same anti-dumping procedure regarding goods under review.”

II. This Law shall take effect 30 days after its publication.

Passage five of part nine of this Law shall apply as of the date of Ukraine's WTO accession.

Chairman of the Verkhovna Rada of Ukraine

V. Lytvyn