

The Law of Ukraine

On Protection of the National Producer against Dumped Imports

- 5) dumping -importation of goods into the customs territory of the importing country at lower prices than the comparable prices for the similar goods of the exporting country, which causes damage to the national producer of similar goods;
- 6) margin of dumping - amount to which the normal value exceeds the export price. The procedure of determination of dumping margin is specified in Article 9 of this Law;
- 7) export price - a price which is actually paid or subject to payment for goods being sold to an

17) normal value - equivalent of the goods' price in the domestic market. The procedure of determination of a normal value is stipulated in Article 7 of this Law;

18) period of investigation - period, preceding the initiation of an anti-dumping investigation, within which the facts of the presence of dumping are investigated. The procedure of determination of the period of investigation is specified in Article 13 of this Law;

19) sales - transfer of property by one person into ownership or use and (or) possession and (or) at disposal of other person, particularly, transfer under the agreements of purchase and sale, property lease, other civil and legal agreements, or in case of substitution of one obligation by another, or changes in the terms of obligations' fulfillment;

20) parties of an anti-dumping investigation - a foreign producer, exporter, importer, union (association), competent authorities of the exporting country, national producer etc., which have been notified of the initiation of an anti-dumping investigation according to the established procedure;

21) interested party - any person notifying the central body of executive power in the field of economic policy (hereinafter – “the Ministry”) of his interest in participation in an anti-dumping investigation in accordance with part twelve of Article 12 of this Law and who is taking an active part in the anti-dumping investigation through providing written evidence or other information, suff6 sgT:00.9(tral bur)7.4(e)8.1(h)-1.1e 4(ne)9.6(n7.4(e)8.1(h)-9.6(n.2(i)-6.161 Tw-

23) comparable price - price of the similar goods in the exporting country that is practiced in the traditional trade operations;

24) goods - any products for sale;

25) goods with a short-term product cycle - goods which due to emerging of advanced technologies are recognized outdated, according to the conclusion of the Ministry and Interdepartmental International Trade Commission (hereinafter - the Commission). The procedure of determination of goods with a short-term product cycle is specified in Article 26 of this Law;

26) similar goods - identical goods i.e. alike by all characteristics on goods subject to an investigation, or in case of the absence of such goods, other goods, which though are not alike by all characteristics, have indicative signs, closely resembling those of the goods subject to an investigation;

27) goods subject to an investigation - goods importation of which into the importing country subject to an anti-dumping investigation and which are identified as such in the corresponding notification on initiation and conducting of the specified investigation;

28) Ukrainian producers - producers of the similar goods or immediately competitive goods, manufactured in the importing country.

Article 2. Sphere of Application of this Law

Article 4. Language of Conducting of Anti-Dumping Investigations

1. According to this Law the anti-dumping investigations shall be performed in the state language of Ukraine.
2. Evidence, written proofs and other information provided to the Ministry, the Service

consideration by a relevant Commission's sitting, shall be forwarded to the members of the Commission.

In case of necessity, experts of state-owned or private institutions, as well as foreign experts, may be invited to the sittings of the Commission.

5. The sitting of the Commission shall be considered authorized if not less than half of the total number of members of the Commission is present.

The Commission shall, within the scope of its authorities, take decisions, arrange and supervise their implementation. Only members of the Commission may vote for adoption of a corresponding decision.

Acts of the Commission, particularly those, concerning the performance of an anti-dumping investigation and application of anti-dumping measures, shall be obligatory for execution.

6. The following decisions may be taken at the sittings of the Commission:

- 1) on initiation of an anti-dumping investigation;
- 2) on positive and negative conclusions as to the presence of dumping and methods, enabling to determine the margin of dumping;
- 3) on positive or negative conclusion as to the presence of damage and its size;
- 4) on determination of a cause-and-effect relation between the dumped imports and the damage;
- 5) on application of anti-dumping measures;
- 6) on other matters within the authorities, envisaged by this Law.

7. Decisions of the Commission shall be taken by a simple majority of vote and in particular cases, envisaged by this Law, by two-thirds (qualified majority) of its members' votes.

8. Decision of the Commission, taken by a simple majority of vote, shall be deemed taken, provided the majority of members of the Commission have voted for it. In case of equal division of votes the vote of the Head of the Commission is casting.

9. Decision of the Commission taken by a qualified majority of votes shall be deemed taken, provided two-thirds of members of the Commission have voted for it

10. In case of necessity, decisions of the Commission as to issues, specified in clause 6 of part six of this Article, may be taken under the regular procedure by means of visaing of the draft of the corresponding decision by members of the Commission. In this case the Head of the Commission shall inform the members of the Commission thereof and propose to3rs ofsion aso415.1

(part ten of Article 5 is as amended
by the Law of Ukraine N 1595-III of March 23, 2000)

Article 6. Terms

1. Terms of fulfillment of all the activities according to this Law shall be established by this Law or determined by the Commission or the Ministry. Right to fulfillment of any activities shall be lost upon expiration of the specified terms. All documents, submitted after expiry of

traditional trade operations, where:

such sale or operation have characteristics which are exclusive for the market subject to an investigation;

sales of goods are carried out at prices that considerably differ from those, practiced in the market; with extra large profits; under not ordinary conditions of sales and (or) sales to the party who is a partner or has entered into the compensation agreement; or at prices, determination criteria of which are different from the mechanism of functioning of the market economy.

2. Where an exporter does not produce or sell the similar goods in the exporting country, the normal value shall be determined basing on the prices, established by other sellers or producers.

3. Prices set between associated parties (between controlling and controlled parties) or parties entering into a countervailing agreement shall not be considered prices prevailing in ordinary trade transactions and shall not be used in determining normal value, unless it is established that such prices have no impact on the relations between the parties.

(part three of Article 7 is in the wording
of the Law of Ukraine N 3027-IV of November 1, 2005)

measurement of the period subject to an investigation, according to part ten of this Article. Duration of the stage of launching the production shall be determined in accordance with the circumstances that arose for the producer or exporter of goods subject to an investigation, but shall not exceed the relevant initial stage of the period, required for the recovery of production costs. For the purpose of adjustment of costs, incurred within the period of an investigation,

but paid within the territory of the importing country or outside its borders by each of the parties, which may be a partner or a party that entered into the compensation agreement with an importer, exporter or a third party. Particularly adjustment shall be carried out with respect to:

- 1) transportation, insurance, and shipment costs as well as additional costs;
- 2) customs duty, anti-dumping duty, other taxes and fees (compulsory payments), charged on the import or sale of goods;
- 3) grounded amounts of trade, administrative and other general costs as well as profits.

Article 9. Comparison of the Normal Value with the Export Price and Determination of a Margin of Dumping

1. In order to determine the dumping margin, the normal value, established, according to Article 7 of this Law, shall be compared with the export price, established according to Article 8 of this Law. Such a comparison shall be performed on the basis of identical basic delivery terms (normally FOB plant) for the sales, carried out on the closest date, pursuant to which the corresponding information is available. The basic delivery terms shall be determined according to the International rules of interpretation of commercial terms "Incoterms" in the wording which is effective as of the date of importa

7) costs of credit.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in values of the credit, granted for the relevant sales of goods, in case such factor is used while establishing the price for these goods;

8) after-sale costs.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in direct costs, directly connected with providing surety, technical assistance (consultations) and services, envisaged by the legislation of an exporting country (country of origin or comparison) and (or) purchase and sale contract;

9) commission fee.

The normal value and the export price shall be correspondingly adjusted by the amounts of differences in commission fees paid in the process of sales of goods, subject to consideration;

10) currency conversion costs.

Where the comparison of prices requires a conversion of currencies, such a conversion shall be completed at the exchange rate as of the date of sale of goods subject to consideration.

investigation by means of comparison of:

1) a weighted average value of the normal cost with the weighted average value of export prices of all exporting operations in the importing country;

2) or individual normal value with individual export prices in the importing country for each operation.

8. A weighted average value of the normal value may be compared to the prices of all individual export operations in the importing country provided that:

1) structure of export prices is significantly different with different buyers, in various regions or within a certain period (periods);

2) it is impossible to determine the actual value of a margin of dumping by methods, stipulated in parts six and seven and clause one of this part.

(clause 2 of part eight of Article 9 as amended
by the Law of Ukraine N 3027-IV of November 1, 2005)

9. When establishing a margin of dumping according to this Article, the methods of sampling, may be used according to Article 30 of this Law.

10. In the case where product is not imported directly from the country of origin but from the country of export, the export price of the product shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

(part ten was added to Article 9
according to the Law of Ukraine N 3027-IV of November 1, 2005)

- 1) volumes of the dumped imports and effect thereof upon the prices of similar products in the market of the importing country;
- 2) the consequent impact of these imports on the national producer, which is a logical result of effect of the factors, specified in clause 1 of this Article.
3. As regards the volume of dumping imports, it shall be investigated whether a serious increase in dumping imports has occurred in absolute terms, with regard to production or consumption of relevant goods in Ukraine.

actual and potential decline in sales and production, as well as in the size of profits or profits on the invested capital;

actual and potential contraction of the market or its part;

actual and potential decline in efficiency of production and utilization of capacity;

2) factors affecting the prices in the importing country;

3) actual and potential negative consequences, affecting the state of liquidity, inventories of goods, employment of the population, salary levels, economic development and conditions for attraction of investments.

4) other factors.

When the issue specified in clause two of part two of the present Article is investigated, more than one factor specified in part five of the present Article shall be considered.

(paragraph ten of part five of Article 10 is in the wording of the Law of Ukraine N 3027-IV of November 1, 2005)

6. Damage, caused by the dumped imports, shall be proved in the process of investigation through providing corresponding evidence, which concern a certain anti-dumping

5) the results of export activity and efficiency of productivity of the national producer.

2. The complaint shall be submitted to the Ministry by a registered letter or delivered to the Ministry under a notice of receipt. The Ministry shall forward a copy of the complaint to the Commission to be examined by all its members.

The day, following the day of receipt and registration of the complaint with the Ministry shall be considered the first day of submission of the complaint.

3. Where the complaint has not been submitted directly to the Ministry according to the procedure, stipulated in part two of this Article, or when a corresponding body of executive power of the importing country has the relevant evidence of dumping and damage, the corresponding body shall immediately forward or submit the complaint to the Ministry. Trade unions of employees of the national producer's enterprises shall enjoy a similar right to filing a complaint to the Ministry according to the procedure, established by this Article.

4. The complaint, submitted by the applicant according to parts one-three of this Article, shall contain the evidence of the presence of dumping and damage that are stated to take place and a cause-and-effect relation between them. Particularly, the complaint shall include information, if it is or should be available with the applicant, as to:

1) the applicant and composition of the applicant, proof of the relevant capability of such persons, the volumes and value of production of similar goods by the applicant in the importing country. Where the application is submitted on behalf of the national producer, this application shall specify:

information on the national producer on behalf of which this complaint has been submitted, as well as on the volumes and value of similar goods produced by him in the importing country ;

list of all known national producers of similar goods (or associations of national producers of similar goods) and, if possible, of the volume and value of production of similar goods by these producers in the importing country.

2) goods (including their full description), which are stated to be a subject of dumping, name of the country (countries) of origin or export, which is (are) a subject of the complaint.

3) each generally known exporter or foreign producer and a list of known physical and legal persons, which perform importation of goods being a subject of the complaint;

4) prices at which goods which are a subject of the complaint, are sold for consumption in the domestic market of the country (countries) of origin or export (or, where such information is available, prices at which the goods are sold from the country (countries) of origin or export to

5. Upon receipt of the complaint in accordance with the requirements of parts one - three of this Article, the Ministry shall initiate an anti-dumping procedure, in the process of which the evidence, provided in the complaint, shall be considered, in order to identify whether they are sufficient for initiation of an anti-dumping investigation according to part eleven of this Article.

6. According to parts one-three of this Article the investigation, shall be initiated provided the Ministry and the Commission determine that the complaint has been submitted by a national producer or other person on his behalf. The complaint shall be considered submitted by the national producer or other person on his behalf if it is backed by those Ukrainian producers, whose aggregate production constitutes more than 50 per cent of the total production volume

to be *de minimis*, the Ministry shall recommend that the Commission should not initiate an anti-dumping investigation and that the Commission should reject the application filed by the applicant in accordance with parts one – three of the present Article.

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent of the export price.

Actual or potential volume of dumping imports from the exporting country shall normally be regarded as negligible if the volume of dumped imports is found to account for less than 3 per cent of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 per cent of dumping imports of the product under investigation in the importing country collectively account for more than 7 per cent of dumping imports of the product under investigation in the importing country.

(part nine of Article 12 is in the wording
of the Law of Ukraine N 3027-IV of November 1, 2005)

10. During an anti-dumping procedure, the applicant shall have the right to recall the application before the initiation of an anti-dumping investigation. In

- 3) brief statement (hereinafter -summary) on information, received by the Ministry;
- 4) a reference, that all information which may be useful for the investigation should be forwarded to the Ministry;
- 5) terms within the frames of which:

other parties to antidumping investigation can notify the Ministry of their concern in an anti-dumping investigation, and provide written comments pursuant to such anti-dumping investigation or other required information. The abovementioned comments and other information shall be accounted by the Ministry during the anti-dumping investigation, provided they have been filed with the Ministry within the terms, established in the notification;

interested parties have a right to demand the hearings to be held at the Ministry according to part six of Article 13 of this Law.

13. The Ministry shall notify the exporters, importers, the known unions (associations) of importers or exporters, competent bodies of the exporting country and the applicants of initiation of an anti-dumping investigation. In accordance with the requirements of this Law as to protection of confidential information, the Ministry may provide the known exporters, competent bodies of the exporting country and other interested parties upon their request with a full text of the written complaint. Should the parties of an anti-dumping investigation be proved considerable in number, the Ministry shall forward the full text of the written complaint to the competent bodies of the exporting country only.

14. Conducting of an anti-dumping investigation shall not create impediments to the customs legalization of goods, subject to an investigation.

Article 13. Anti-Dumping Investigation

1. According to the decision of the Commission the Ministry shall initiate an anti-dumping investigation and perform such investigation together with other bodies of executive power of the importing country.

2. The aim of an anti-dumping investigation is to determine the presence of dumping and the damage. The usual term of an investigation is up to one year, but not less than six months, immediately preceding the initiation of an anti-dumping procedure. In exclusive circumstances this term may exceed one year. Any information, not related to the period of investigation is generally not taken into consideration.

The Ministry shall establish the terms of an investigation.

3. Together with the notification on initiation of an anti-dumping investigation the Ministry shall send to the known exporters, importers, other parties of an anti-dumping investigation, which the Ministry considers necessary to be involved into the investigation or to the competent bodies of exporting countries the questionnaires with the purpose of obtaining information and evidence which shall be used in the process of an anti-dumping investigation.

Answers to the specified questionnaire shall be forwarded to the Ministry within 30 days from the day of its reception. The questionnaire shall be deemed received after four days from the date of its sending to the addressee or forwarding to the diplomatic representative of the exporting country.

The term for providing answers to the questionnaire may be extended by the Ministry with consideration of terms, established for performing of the investigation and under condition of providing compelling arguments for such an extension by an interested party.

4. The Ministry is entitled to obtain from the bodies of executive power of the importing country all the necessary information, documents or materials for conducting the anti-dumping investigation. The Ministry, on demand of a member of the Commission, shall forward to this member or to the Commission a non-confidential summary of information, obtained from the specified bodies.

5. While performing an anti-dumping investigation the Ministry shall have the right to:

1) authorize other bodies of executive power of the importing country to undertake inspections or control of the activity of the importers, traders and Ukrainian producers for the purpose of execution the Commission's decisions;

2) carry out in other countries verification of information, received from the interested parties, by consent of the corresponding interested party and in the absence of ()5.1(y6efOc).7(ean)-10(5 n)

Surrender of participation in consultations by parties of an anti-dumping investigation shall involve no negative consequences.

Information provided verbally to the interested parties according to parts seven and eight of this Article, shall be taken into account by the Ministry in the process of an anti-dumping investigation only under condition it has been submitted in writing.

8. The applicants and the interested parties which have notified the Ministry of their concern according to part twelve of Article 12 of this Law, as well as competent bodies of the exporting country, may, upon their written demand, familiarize themselves with any information, provided by an interested party, except for confidential official documents of the Ministry and the Commission, where such information is:

- 1) related to the protection of their interests;
- 2) not confidential according to Article 32 of this Law;
- 3) used in the anti-dumping investigation.

The interested parties may give their comments as to this information, which shall be taken into consideration by the Ministry in the process of an anti-dumping investigation, provided these comments are sufficiently grounded.

9. Any information, provided by the interested parties, on the basis of which a positive or negative conclusion as to the presence of dumping and the damage shall be made, is subjected to the Ministry's verification with the exception of circumstances, stipulated in Article 31 of this Law.

Information and evidence, supplied to the Ministry by one of the interested parties during an anti-dumping investigation, shall be forwarded by this interested party to all other interested parties. In case this information and evidence are not forwarded to the Ministry or to the interested parties or if they cannot be verified, such information and evidence shall not be taken into consideration by the Ministry in the process of an anti-dumping investigation.

10. The period of an anti-dumping investigation shall not exceed one year from the date when the decision to initiate such an investigation took effect.

(paragraph one of part ten of Article 13 is in the wording of the Law of Ukraine N 3027-IV of November 1, 2005)

The Commission, by a relevant decision, may prolong the term of an investigation, however this term shall not exceed 18 months.

(paragraph two of part ten of Article 13 as amended by the Law of Ukraine N 3027-IV of November 1, 2005)

Chapter IV

ANTI-DUMPING MEASURES

Article 14. Provisional Anti-Dumping Measures

1. Provisional anti-dumping measures may be taken under the following conditions:

1) initiation of an anti-dumping procedure in accordance with the procedure, established by Article 12 of this Law;

2) initiation of an anti-dumping investigation in accordance with the procedure, established by Article 13 of this Law;

3) publication of notification on initiation of an anti-dumping investigation in the newspaper;

4) the interested parties have been provided with a corresponding opportunity to submit information and comments according to part twelve of Article 12 of this Law;

5) in the course of an anti-dumping investigation the Ministry has made a preliminary positive conclusion on the presence of dumping and damage, that is a consequence of such dumping;

6) the national interests require application of the provisional anti-dumping measures in order to prevent the threat of damage;

2. The provisional anti-dumping measures shall be applied upon the Commission's decision not earlier than after 60 days and not later than nine months from the date of initiation of the corresponding anti-dumping investigation.

3. In case the exporters, importers and producers of goods, subject to an anti-dumping investigation, refuse the Ministry's verification

date of initiation of the corresponding anti-dumping investigation, shall determine whether the provided information is sufficiently grounded for making a preliminary conclusion as to the presence of dumping and the damage. Such conclusions shall be made not later than 75 days after the date of initiation of an anti-dumping investigation.

5. If a member of the Commission demands the immediate application of the provisional anti-dumping measures according to the requirements of parts one and two of this Article, the Ministry shall:

1) make preliminary conclusions as to the presence of dumping and the damage as well as on the expediency of application of the provisional anti-dumping measures not later than on the tenth workday after reception of the properly issued demand of a member of the Commission;

2) inform the interested parties and the Commission of these conclusions and suggest the date of conducting a Commission's meeting on this issue.

6. Before completion of an anti-dumping investigation the Ministry shall establish the sufficiency of evidence, provided by the applicants, interested parties and bodies of executive power of the importing country as to the presence of dumping and the damage and expediency of application of provisional anti-dumping measures. The Ministry shall inform the Commission on the content of these conclusions.

Not later than 10 days before the possible date of application of the provisional anti-dumping measures, the Ministry may inform the interested parties of its grounds that in the opinion of the Ministry necessitate submission of the proposal on application of the said measures to be considered by the Commission. The interested parties may submit their comments on this matter to the Ministry. The Ministry shall consider the comments of the interested parties under condition they were submitted to the Ministry not later than 5 days prior to the date of making decision by the Commission on application of the provisional anti-dumping measures. The reasons for non-acceptance of the comments for consideration shall be stipulated in the corresponding decision of the Commission. .

On the basis of the said proposals of the Ministry the Commission may take decision on application of the provisional anti-dumping measures not later than nine months after the date of initiation of an anti-dumping investigation.

7. Conclusions of the Ministry as to rejection of the provisional antidumping measures do not exclude taking a decision by the Commission as to application of the specified measures in the following cases:

1) upon a grounded request of a member of the Commission; or

2) upon a grounded request of an interested national producer; or

3) on initiative of the Ministry in case of identification of a new evidence of the presence of dumping and the damage.

8. The provisional anti-dumping measures may be applied through an introduction of collecting a preliminary anti-dumping duty. The rate of the anti-dumping duty shall be established by a

corresponding resolution of the Commission.

The rate of the provisional anti-dumping duty shall be established:

in percentage of the customs value of goods subject to an anti-dumping investigation. The customs value of these goods shall be calculated in accordance with the basic terms of delivery CIF the importing country border; or

as a difference between the minimum value and customs value of the specified goods, calculated in accordance with the basic terms of delivery CIF the importing country border;

Minimum price is a selling price of the specified goods that shall not cause damage to the national producer. The minimum value shall be calculated by the Ministry according to part nine of this Article.

9. The procedure of calculation of minimum price is as follows:

1) The Ministry shall calculate the price of goods, subject to an anti-dumping investigation, which was practiced in the market of the importing country within the basic period. The

8) the Ministry shall provide the Service with information on the minimum price not later than on 1 day of each month;

13. The provisional anti-dumping measures shall be applied within a four months period. The Commission may extend this term by two more months, however the total term of application of the provisional measures shall not exceed six months. The term of application of the

Commission shall make a decision on terminating such an anti-dumping investigation without the application of anti-dumping measures.

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent of the export price.

Actual or potential volume of dumping imports from the exporting country shall normally be regarded as negligible if the volume of dumped imports is found to account for less than 3 per cent of imports of the product under investigation in the importing country, unless exporting countries which individually account for less than 3 per cent of dumping imports of the product under investigation in the importing country collectively account for more than 7 per cent of dumping imports of the product under investigation in the importing country.

If during an anti-dumping investigation the Ministry should establish that the margin of dumping for individual exporters is less than 2 per cent of the export price, there shall be immediate termination of an anti-dumping investigation by the Commission upon the Ministry's suggestion without the application of anti-dumping measures against such exporters. These individual exporters shall continue to be subject to an anti-dumping procedure and may become subject to a new anti-dumping investigation in the course of the further revision of anti-dumping measures that is carried out according to Chapter V of the present Law.

(part four of Article 16 is in the wording
of the Law of Ukraine N 3027-IV of November 1, 2005)

5. Generally an anti-dumping investigation shall terminate in accordance with the decision of the Commission on application of the definitive anti-dumping measures. The definitive anti-dumping measures shall be applied under the following principles:

- 1) where the Ministry has made the ultimate positive conclusion as to the presence of dumping and the damage which is a consequence of this dumping, and where the national interests require the anti-dumping measures to be applied according to Article 36 of this Law;
- 2) while applying the provisional anti-dumping measures the Ministry shall forward to the Commission a proposal on application of the definitive anti-dumping measures one month prior to expiration of the term of application of the specified provisional measures;
- 3) on proposal of the Ministry the Commission shall take decision on collection of the definitive anti-dumping duty and establish the rate of this duty, that shall not exceed the value of a margin of dumping, calculated according to this Law, and may be less than the value of such margin, provided this rate is sufficient to prevent the damage, caused to the national producer;

(clause 3 of part five of Article 16 as amended)

CIF the importing country border; or

as a difference between the minimum price and customs value of the specified goods, calculated in accordance with the basic terms of delivery CIF the importing country boarder. In this case the minimum value for a five-year term shall be calculated according to part nine of Article 14 of this Law

imported into the customs territory of the importing country, after the date of entry into force the relevant Commission's decision on application of such measures, except cases, determined by this Law.

2. In the case where a provisional anti-dumping duty has already been imposed and the

the specified goods have been a subject of dumping for a long period of time in the past or an importer was or should have been aware of the existence of dumping, its size and (or) damage, which is stated to have taken place, and which has been established in the process of an anti-dumping investigation;

besides the imports that cause damage and which have been carried out within the period of an investigation, a new substantial growth in the volumes of imports took place, that, taking into account the specific period of its fulfillment, as well as the volume and other circumstances (particularly, fast increase of inventories of the imported goods), may neutralize the effect of the definitive anti-dumping duty, collected of such imports.

5. In case of violation or cancellation of exporter's obligations to discontinue the dumped imports, a collection of the definitive anti-dumping duty from goods may be introduced 90 days prior to the date of application of the provisional anti-dumping measures, but not earlier than the date of initiation of the corresponding anti-dumping investigation under the presence of the following circumstances:

1) importation of the specified goods into the importing country has been carried out under the

generally not later than twelve months from the date of initiation of such reconsideration.

5. The Ministry shall fulfill the reconsideration of the anti-dumping measures according to the

Article 21. Reconsideration of Anti-Dumping Measures in order to Establish Individual Values of a Margin of Dumping for New Exporters or Producers.

1. The Ministry, by decision of the Commission, shall reconsider the anti-dumping measures for determination of individual values of dumping margins for the new exporters or producers from exporting countries subject to consideration and who have not exported goods within the period of investigation, under results of which the anti-dumping measures have been applied.

2. The Ministry shall fulfill the specified reconsideration under the following conditions:

1) a new exporter or producer proves that he is not connected with those exporters or producers from an exporting country, whose importation of goods into the importing country is subject to the application of anti-dumping measures;

2) the exporters or producers, determined in clause 1 of this part, performed exportation of goods into the importing country within the period of investigation, or where the specified exporters and producers prove that they have signed irrevocable contracts on the exports of sufficient quantities of products to the importing country.

3. The Ministry, by decision of the Commission, shall reconsider the anti-dumping measures for the purpose of establishing individual values of a margin of dumping for a new exporter or producer from the exporting country. Such reconsideration shall be executed within a short period of time, established by the Commission.

4. Within the period of such reconsideration the Ukrainian producers may provide their comments on expediency of such reconsideration.

5. Collection of the acting anti-dumping duty from a new exporter, subject to this reconsideration, shall be terminated by a relevant decision of the Commission and mandatory registration of contracts on imports into the importing country shall be introduced according to Article 28 of this Law, with the aim to resume collection of an anti-dumping duty from the date of initiation of the relevant reconsideration, in case the presence of dumping on the part of this exporter has been proved in the process of such reconsideration.

6. The provisions of this Article shall not be applicable, where the anti-dumping duty is charged according to part seven of Article 16 of this Law.

Article 22. Accelerated Reconsideration of Anti-Dumping Measures

1. An exporter, importing goods to the importing country, that are covered by the definitive anti-dumping duty, who has not been identified as an individual subject of a primary anti-dumping investigation by reasons, other than refusal to cooperate with the Ministry, has a right to apply to the Ministry with a demand to initiate an accelerated reconsideration of anti-dumping measures for the purpose of establishing by the Ministry and the Commission the rate of the definitive anti-dumping duty for the said exporter.

(part one of Article 22 as amended
by the Law of Ukraine N 3027-IV of November 1, 2005)

2. The Ministry shall perform an accelerated reconsideration of anti-dumping measures,

export prices. Within one month after it was submitted by the Ministry, the proposal shall be approved by the Commission unless it decides by a simple majority vote to reject it. The anti-dumping duty rate established in accordance with this Article shall not be a double of the duty rate established by the Commission in its original decision.

(part three of Article 23 is in the wording of the Law of Ukraine N 3027-IV of November 1, 2005)

4. The corresponding provisions of articles 12 and 13 of this Law shall be applied in the process of the resumed investigation, initiated according to this Article. Generally, the resumed investigation terminates not later than after six months from the date of its resumption.

5. Any changes in the normal value, which are stated to have taken place, shall be taken into account in the process of the resumed investigation if the complete and duly proved by evidence information on the normal value (here and hereinafter in this chapter - more than one normal value), inspected by the Ministry is provided to the Ministry within the term, determined in the notice on initiation of an anti-dumping investigation. If the normal value is calculated anew in the process of the resumed investigation, the contracts on importation of goods into the importing country, subject to such an investigation, are subject to the mandatory registration according to Article 28 of this Law prior to making a decision due to the results of the aforementioned resumed investigation.

Article 24. Refund of the Paid Amounts of Anti-Dumping Duty

1. An importer has a right to demand the anti-dumping duty to be refunded, provided this importer proves and the Commission takes a relevant decision that the value of a margin of dumping, on the basis of which the rate of the said duty has been calculated, was decreased to a zero rate or to the level that is lower than the value of the preliminary calculated margin of dumping, on the grounds of which the anti-dumping duty has been collected.

2. For the purpose of refund of the paid amounts of the anti-dumping duty, an importer shall submit a corresponding application to the Service. This application shall contain information on customs bodies that carried out the customs legalization of products, covered by the anti-dumping duty. The application shall be supplemented with documents, confirming importation of goods into the importing country, their customs legalization and payment of the anti-dumping duty within six months from the date of taking the Commission's decision on imposition of the definitive anti-dumping duty or from the date when the ultimate decision on collection of amounts that shall secure payments of the preliminary anti-dumping duty has been made.

The Service shall immediately forward to the Ministry the originals of such application and the attached documents. Copies of the stipulated documents shall be directed to the Commission and the Ministry of Finance of Ukraine.

3. The application on refund of the paid amounts of anti-dumping duty shall be considered properly substantiated, under condition it provides for accurate information on the paid amounts of an anti-dumping duty and is accompanied by all the customs documents on settlements and payments of the specified amounts. The application should also contain substantiation of the normal value and export prices in the importing country for the exporters

or producers, which have paid the anti-dumping duty within the term, established in part two of this Article.

In case the importer is not related to the exporter or producer of the said goods and where it is impossible immediately to use the available information, specified in parts two and three of this Article, or the exporter or producer refuses to provide the importer with such information, the stipulated application shall contain substantiation of the exporter or producer, proving that the value of the margin of dumping has been decreased or removed according to this chapter, as well as respective evidence

substantiated evidence, proving that the rate of an anti-dumping duty properly affects the reselling prices of products and prices of the next sale of such products in the importing country.

3. The provisions of this chapter shall create no impediments to the customs legalization of goods, subject to an anti-dumping investigation as to reconsideration of the anti-dumping measures or refund of paid amounts of the anti-dumping duty, carried out according to this chapter.

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relevant report and submit it to the Commission.

2. Upon receipt of the aforementioned application from a national producer and the relevant report of the Ministry, the Commission shall:

1) apply for the Ministry and the Service for the immediate confirmation of positive conclusions, which are the grounds for the aforementioned application;

2) upon reception of such confirmation determine whether:

the stipulated goods are subject to positive conclusions as to the presence of dumping and whether such goods are goods with a short-term product cycle or similar products;

1) directly or indirectly compete with other products, with respect to the imports of which two or more positive conclusions on the presence of dumping have been made;

2) is so similar to such products that may be attributed to the same category, established according to this Article.

introduction of an anti-dumping duty shall be neutralized by prices and (or) volumes of similar products;

the dumping exists because of the normal value which has been previously calculated for similar products.

2. The assembly of certain products in the importing country or in a third country shall be considered avoidance of payment of the anti-dumping duty, where:

1) such transaction has been initiated or is carried out immediately before or after initiation of

Commission, upon proposal of the Ministry, may take a decision by a simple majority of vote as to application of anti-dumping measures. Such measures shall be applied after the Commission takes a relevant decision according to part four of this Article.

6. Where imports of products into the importing country are performed under a license of the Ministry, certifying that such product imports do not cause an avoidance of payment of an anti-dumping duty, no anti-dumping measures shall be applied to such imports and the contracts, under which the stipulated imports have been fulfilled, shall be exempted from compulsory registration in accordance with part four of Article 28 of this Law.

7. The provisions of this Article shall not create impediments to execution of the customs legalization of goods, subject to an anti-dumping investigation.

Article 28. General Provisions on Collection of Anti-Dumping Duty

1. A provisional or definitive anti-dumping duty shall be collected at the rate and under the

(clause 1 of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of November 1, 2005)

2) the national producer had an opportunity to submit his comments on suspension of the force of anti-dumping measures;

3) the comments, provided by a national producer to the Ministry, were taken into account by the Commission.

(clause 3 of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of November 1, 2005)

The force of the anti-dumping measures may be resumed by the decision of the Commission provided their suspension is unjustified. An interested party may submit to the Ministry its comments on this matter, which may be taken into consideration by the Ministry. The Commission shall take a relevant decision as to this issue upon representation of the Ministry.

(paragraph five of part three of Article 28 as amended by the Law of Ukraine N 3027-IV of November 1, 2005)

4. The decision on introduction of the practice of registration of contracts on importation of goods into the importing country, including their compulsory registration according to this Law, shall be made upon representation of the Ministry at the extraordinary meeting of the Commission. A substantiated application (complaint) of an interested party, body of executive power of the importing country or that of the national producer may be the basis for the relevant recommendation of the Ministry.

After reception of the application (complaint), the Ministry shall consider all the provided information and evidence, contained therein, within five days from the day of their reception with the purpose of determination whether such information and evidence are sufficient for making a relevant decision by the Commission. In case the Ministry establishes that these information and evidence are sufficient, the Commission at its meeting, upon proposal of the Ministry, may take a decision on introduction of the practice of registration of contracts on imports into the importing country, including their compulsory registration according to this Law.

Grounding on the decision on introduction of the specified registration and after val4(cou)-4.ts onra The

Importation of goods to the customs territory of the importing country under the contracts on imports into Ukraine shall be ca

3) the absence of objections on the part of the preliminary informed stipulated competent authorities.

Upon receipt of the consent of an interested party the Ministry shall notify the competent bodies of the names and addresses of enterprises, to be inspected, as well as on the dates of performing these verifications, proposed by the Ministry.

In case the interested party gives no consent, within the term, proposed by the Ministry, the verification of the said information may be unfulfilled. In this case the corresponding provisions of Article 31 shall be applied.

3. The interested parties shall be notified of the list of information, subject to verification, and other information, which should be provided by these parties in the process of verifications. The Ministry may demand providing of more detailed information, if such a necessity arises in the course of verification.

4. While conducting the verification of information, the Ministry may apply for the assistance of the members of the Commission.

Article 30. Selective Methods of Anti-Dumping Investigation

1. Where the number of applicants, exporters or importers (hereinafter - parties), types of products or corresponding operations is considerable, the Ministry may confine oneself with:

1) reasonable number of parties, types of products or operations, using a sampling which is statistically grounded on the basis of information, which is available with the Ministry at the moment; or

2) the greater volumes of production, sales or product exports that, in case of necessity, may be

dumping investigation and create impediments to the timely termination of this investigation and making a decision on the application of anti-dumping measures.

(part three of Article 30 as amended
by the Law of Ukraine N 3027-IV of November 1, 2005)

4. Where after making a decision by the Ministry a decision on application of a selective method of an- anti-dumping investigation has been made and all the selected parties or some of them avoid the cooperation with the Ministry to the extent that sufficiently affects the results of an anti-dumping investigation, the Ministry may carry out a new sampling. Provided an interested party avoids cooperation with the Ministry on condition of the shortage of time for new sampling, the relevant provisions of Article 31 of this Law shall be applied.

Article 31. Avoidance of Cooperation with the Ministry

1. In case, an interested party refuses to provide necessary information or fails to provide it within the terms, envisaged by this Law, or creates impediments to an anti-dumping investigation, the Ministry, on the grounds of the available information, may take positive or negative preliminary or definitive conclusions on the necessity of immediate application of anti-dumping measures.

If in the process of an anti-dumping investigation the Ministry establishes that the interested party has provided inadequate or incorrect information the Ministry shall:

1) ignore such information;

2) notify the interested parties of the consequences of avoidance of cooperation with the Ministry.

2. The fact of failure to provide a response on an information medium shall not be deemed avoidance of cooperation with the Ministry, provided the interested party proves that providing of a response in the forms, established by the Ministry, would likely cause excessive incidental or excessive additional expenditures.

3. If the information, provided by the interested party is incomplete, the Ministry shall take it into account under condition that:

1) such incompleteness does not complicate the possibility of taking adequate conclusions by the Ministry;

2) such information has been submitted to the Ministry within the proper terms;

3) such information is suitable for verification.

4) the interested party, providing the information, act in good faith and to the best of its abilities.

4. In case the Ministry does not take into account the provided evidence or information, the

notified of the reasons of t rejection of the said information and shall be provided with an opportunity to supply additional comments within the terms, established by the Ministry. Where such comments are considered insufficient, the reasons for rejection of the aforementioned evidence or information shall be forwarded to a corresponding interested party and specified in the conclusions, published in the newspaper.

interests of the interested parties as to nondisclosure of their commercial and (or) state secrets shall be taken into account.

5. The Ministry, the Commission or their official officers should not disclose the information, obtained according to this Law without a special consent of a person, who has provided such information, if this person insists on the confidential treatment of such information. The information exchanged between the Ministry and the Commission, as well as information related to the meetings of the Commission or official documents of the Ministry or the Commission, concerning an anti-dumping investigation shall not be disclosed, except cases, envisaged by this Law.

6. Information received in accordance with this Law shall be used only for the purposes for which it has been requested. This provision shall not rule out the use of information received in the course of one anti-dumping investigation for the purposes of initiating other anti-dumping

Article shall be submitted to the Ministry in a written form. In the event of application of the provisional anti-dumping measures such demands shall be forwarded to the Ministry not later than one month from the date of publication of a decision on their application. Where the provisional anti-dumping measures have not been applied, the interested parties may demand provision of the ultimate information within the terms, established by the Ministry.

4. The Ministry shall provide the ultimate information in writing. The information is generally provided, with consideration of the requirements to the protection of confidential information, not later than one month prior to making an ultimate decision by the Commission or prior to the date of submission by an interested party of its final proposal according to Article 16 of this Law. If the Ministry and (or) the Commission fail to provide the information, evidence or conclusions immediately, those information, evidence or conclusions shall be provided later within the undertime. Provision of information shall not create impediments to making further decisions by the Ministry or the Commission. Where such decision is based on the evidence and conclusions, different from those, provided with the previous information, the information on the presence of new evidence and conclusions shall be provided to the interested parties within the undertime.

provisions of this Article and, if necessary, correct the mistakes of executors, through introduction of amendments to the draft of ultimate decision on collection of an anti-dumping duty or draft of the decision on reconsideration of the anti-dumping measures. The Ministry shall notify the interested parties of introduction of such amendments. Introduction of

part two of this Article and define to which extent such information is indicative. The results of such consideration and the decision on substantiation of this information shall be submitted to the Commission. The summaries of conclusions of the members of the Commission, reviewed at the meeting of the Commission, shall be taken into account by the Ministry in its proposals, provided to the Commission according to Article 16 of this Law.

6. The interested parties may apply for the provision of evidence and conclusions, on the grounds of which the Commission may take its ultimate decisions. The Ministry shall provide such information, unless it creates impediments to the Ministry or the Commission while making the relevant decisions.

President of Ukraine

L. Kuchma

Kyiv

December 22, 1998

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