

The Law of Ukraine

On Application of Safeguard Measures against Imports to Ukraine

As amended and added by the Laws of Ukraine
N 1595-III of March 23, 2000,
N 663-IV of April 3, 2003,
N 860-IV of May 22, 2003,
N 3028-IV of November 1, 2005

(In the text of the Law words “the Ministry of Economy of Ukraine in all cases are replaced with words “the central body of executive power in the field of economic policy” in respective case according to the Law of Ukraine N 860-IV of May 22, 2003)

For the purpose of establishing mechanisms for protection of the interests of national producer¹ this Law shall regulate the principles and procedure of initiation and execution of special investigations of the facts of increased imports to Ukraine irrespective of the commodity's country of origin and exporting country which cause serious injury or threaten to cause serious injury to national producer and may result in application of the safeguard measures.

(preamble of the Law as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

Chapter I GENERAL PROVISIONS

Article 1. Definitions of Terms

The terms used in this Law shall have the following meanings:

- 1) **directly competitive product** shall mean a product which directly competes with a product under special investigation;
- 2) **exporter** shall mean a subject of the legal and economic relations which exports the product (products) from the country;
- 3) **threat to cause serious injury** shall mean the imminent threat to cause serious injury to national producer. A determination of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

(clause three of Article 1 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

4) **interested party** shall be any person notifying the central body of executive power in the field of economic policy (hereinafter referred to as the Ministry) of his interest to be involved in a special anti-dumping investigation in accordance with part two of the Article 9 of this Law and who is taking an active part in special investigation by providing written evidences or other information sufficient to the purposes of this investigation. The interested parties could be:

¹ The term ‘national producer’ used in this Law is analogue to the term ‘domestic industry’ used in WTO Agreement on Safeguards

(paragraph one of clause 4 of article 1
as amended according to the Laws of Ukraine
N 1595-III of March 23, 2000,
N 663-IV of April 3, 2003)

foreign producer, exporter or importer of the product under investigation, or corporation (association), where the majority of its members are foreign producers, exporters or importers of the product under investigation;

the competent authorities of a country exporting products under investigation;

national producer, producer or wholesale seller of the like products in Ukraine;

the corporation (association) where the majority of its members produces or makes wholesale trade of the like products in Ukraine;

a trade union comprising employees of the enterprises producing or making wholesale trade of the like products in Ukraine;

consumers, associations of consumers;

(new paragraph seven was added to clause four of Article 1
according to the Law of Ukraine N 3028-IV of November 1, 2005,
therefore paragraph seven shall be considered paragraph eight)

bodies of the executive power in Ukraine within their competence;

5) serious injury shall mean impairment in production, trade or financial situation of national producer which entails sufficient overall decline in the national production of a definite product;

6) import shall mean importation of product (products) to the customs territory of an importing country for consumption in this country;

7) importer shall mean a subject of economic and legal relations declaring delivery of product (products) to the customs territory of Ukraine;

8) competent authorities shall mean a bodies of state power of a country of origin or exporting country (customs union or economic group) which ensure, within their competence, implementation of its foreign and/or foreign economic policies;

9) exporting country shall mean a country of origin of product imported to Ukraine. An exporting country could be considered the country acting as an agent (customs union or economic group) with exception of cases when such product is transported as transit through this country, but is not produced in this country or there is no comparable price for this product in this country;

10) country of origin shall mean a country (customs union or economic group) where products have been fully produced or undergone sufficient processing or reworking;

11) national producer shall mean an aggregate number of producers of like products or directly

12) period of investigation shall mean a period during which the Ministry investigates growth dynamics of volumes of imports of commodity that is the object of investigation, and the production, commercial, and financial status of the national producer;

(clause 12 of Article 1 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

13) like product shall mean an identical product i.e. alike in all aspects to the product under investigation, or in the absence of such product, another product which although not alike in all aspects, has distinguishing characteristics closely resembling those of the product under investigation;

14) sales shall mean transfer of property by any person to ownership or use and/or possession or/and at disposal of another person, in particular under the terms of purchase and sale contracts, property lease, other civil agreements, or in the event of change of one taken obligations to another or change in the terms of obligations to be performed;

15) special investigation shall mean the investigation of the facts of increased imports to Ukraine which causes serious injury or threaten to cause serious injury to national producer of the like or directly competitive product;

16) product shall mean any product manufactured for trading.

Article 2. Scope of Application

1. The terms of all and any actions under this Law shall be specified by the provisions hereof or be established by the Commission or Ministry. Upon expiry of such terms the right to any action shall be deemed to be lost. Any documents submitted after expiration date shall remain without consideration. The Commission or Ministry has the right to extend or reinstate the terms in the event of providing sufficient justification thereof.

2. The terms specified by this Law, or by the Commission or Ministry shall be calculated in years, months and days.

The terms shall be also fixed in a form of an imminent event.

Ukraine and to the members of the Commission within five days of the date of receipt of aforementioned information and/or application.

Article 6. Application

The national producer may direct to the Ministry an application with a claim to apply the measures stipulated by this Law against the imports to Ukraine. Such application shall have the substantiated evidences of the factors illustrated in clauses 1 and 2 of part two of the Article 13 of this Law.

Article 7. Authorities of the Commission with Regard to Protection of National Producer against Increased Imports

1. The procedure of establishment and work of the Commission is defined in the **Law of Ukraine “On Protection of the National Producer against Dumped Import”**.

The first hearing of the Commission shall be held not later than in a month’s time of the date of receipt by the Ministry of the information indicated in the Article 5 of this Law, and/or of a copy of an application indicated in the Article 6.

(paragraph two of part one of Article 7 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

Any subsequent hearings including those held in the course of a special investigation and

on applying measures of monitoring the imports of the commodity that are the object of investigation;

on applying special measures in respect of the imports of the commodity that are the object of investigation;

on discontinuing special investigation without application of special measures;

on alleviating special measures in respect of the imports of the commodity;

on review of special measures in respect of the imports of the commodity;

an application and/or information submitted by the Ministry pursuant to part three of the Article 5 of this Law;

the evidences described in such application or objective information acceptable for consideration by the Commission relating to increased imports to Ukraine which has caused or threatened to cause serious injury to national producer by such imports;

If conclusions of such examination prove sufficiency of the evidences on increased imports to Ukraine, which may cause damage, or threaten to cause damage to national producer the Commission shall make decision on initiation of a special investigation and authorize the Ministry to carry out such investigation and give public notice in the newspaper on initiation of a special investigation. The Commission shall make such decision by a simple majority vote.

If the Commission has established that the provided evidences are insufficient to initiate a special investigation, the Commission shall make an appropriate decision on inexpediency of initiation of a special investigation and authorize the Ministry to notify the Service, an appropriate body of executive power of Ukraine or national producer of its conclusions. Such decision the Commission shall make by two-thirds (a qualified majority) vote.

A decision on initiation or on inexpediency of initiation of a special investigation shall be made by Commission within 30 days of the date the Ministry has received the information or application described in the Articles 5 and 6 of this Law.

2. The Ministry shall begin an in

3. The Ministry has the right to require the Service and other bodies of executive power of Ukraine, the interested parties to provide the information needed to perform a special investigation. Such request shall be binding to the bodies of executive power and interested parties, and be fulfilled within the time-limit fixed by the Ministry.

For the purpose of establishing whether the evidences stated in information provided to the Ministry by the Service or other bodies of executive power of Ukraine or interested parties are sufficient enough to carry out a special investigation, the Ministry shall verify such information.

4. The interested parties shall have the right to apply to the Ministry in writing, within the time-limits specified in the notification of initiation of a special investigation, with requirement for the hearing to be held at the Ministry in the matters of a special investigation with their participation therein:

1) if they have proved that such special investigation concerns their interests and the results thereof may affect their business;

2) provided that there are special reasons for such hearings to be held.

5. The interested parties participating in the hearings pursuant to the matters of a special investigation may supply additional information to the Ministry in the course of such hearings. Oral information supplied to the Ministry by the interested parties in the course of hearings shall be accounted by the Ministry when carrying out special investigation only if it is subsequently reproduced in writing not later than five days of the date of closing the hearings.

6. The interested parties may, on written request, see all information provided by another interested party with exception of the official documents of the Ministry, Service and Commission if such information:

1) relates to protection of their interests;

2) is not confidential pursuant to the Article 12 of this Law;

3) is used for the purposes of a special investigation.

The interested parties may supply their comments to such information, which shall be accounted by the Ministry, provided that such comments are well grounded and have been supplied to the Ministry within fixed time-limits.

The information and evidences supplied to the Ministry by one of the interested parties in the

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of the actual data in its disposal. The Ministry shall direct such conclusions to the Commission's consideration.

8. The Commission, pursuant to the conclusions made by the Ministry, may adopt a resolution on termination of a special investigation. Such resolution shall be adopted by the Commission by

3) the interested parties have been given an opportunity to submit their comments and other

The application of the provisional safeguard measures shall terminate of the date of an appropriate decision of the Commission laid down in this part entering into force.

5. If the Commission reached a conclusion that no injury has been caused or threatened to cause to the national producer, the Commission shall make a decision at the hearing on:

1) nullification of application of the provisional safeguard measures;

Such decision shall also nullify imposition of a special duty.

2) continuation by the Ministry of a special investigation.

process of special investigation shall, upon good cause shown, be treated as such by the Ministry.

2. The interested parties providing the Ministry or Commission with confidential information shall furnish it with non-confidential summary thereof. The summary shall be detailed to the extent which allows understanding essence of the information provided on a confidential basis. If interested parties indicate that such information cannot be summarized, they shall specify the reasons why a summary cannot be provided.

If the Ministry finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

(part two of Article 12 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

3. The Ministry or Commission must not disclose the confidential information without a permission of the party that provided it. The information exchanged between the Ministry and Commission, as well as information on the hearings of the Commission or official documents of the Ministry or Commission relating to a special investigation must not be disclosed.

(part three of Article 12 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

4. The information obtained pursuant to the provisions of this Law shall be used only for the purposes thereof.

5. This Article does not hinder a disclosure by the Ministry or Commission of general information or evidences on the basis of which the Commission makes a decision.

6. The persons who are guilty of disclosure of the confidential information obtained pursuant to the provisions of this Law shall bear responsibility in accordance with legislation.

7. Part seven of Article 12 is deleted.

(according to the Law of Ukraine
N 3028-IV of November 1, 2005)

Article 13. Establishment of Existence of Serious Injury or Threat Thereof

1. In the course of a special investigation the Ministry shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the national producer, in particular:

(paragraph one of part one of Article 13 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

1) tendencies in Ukraine's imports under investigation, particularly growing imports and (or) conditions thereof;

(clause 1 of part one of Article 13 in wording of
the Law of Ukraine N 663-IV of April 3, 2003)

Chapter IV
SURVEILLANCE MEASURES AGAINST IMPORTS TO UKRAINE

Article 14. Procedure of Application of Surveillance Measures against Imports to Ukraine

1. If in the course of a special investigation the Ministry establishes a threat to cause serious injury, the Commission on recommendation of the Ministry shall make a decision to apply in the course of such investigation the surveillance measures pursuant to the provisions of the Article 15 of this Law. Such decision shall be made within the 15 TD. a3eereoae5(e)0 Tn on receyas 5.3jority vo

Basic conditions of the delivery shall be established pursuant to the International interpretation of the commercial terms – “INCOTERMS” in the wording, which is valid at the date of product importation to Ukraine.

Where the product has specific consumer characteristics or there is specific situation in the market of Ukraine the periodicity of submission of such information specified in the first paragraph of this part may be changed by the Commission on proposal of the Ministry.

Such information shall contain the description of the product and the country of origin. Any other information may be provided if determined in the appropriate decision of the Commission.

Article 15. Surveillance and Regional Surveillance Regimes of the Imports to Ukraine

1. The importation of a product to the customs territory of Ukraine, to which has been applied the surveillance or regional surveillance measures against imports to Ukraine, pursuant to the appropriate decision of the Commission, shall be carried out if an appropriate permission to imports issued by the Ministry under established order and form, within seven working days of the date of submission by an interested importer of an appropriate application, has been supplied to the appropriate customs authority of Ukraine.

2. In such application pursuant to part one of this Article an interested importer shall provide, in particular, the information on:

the full name of the applicant and his registered address (first name, second name and patronymic name for a natural person);

identification code (number);

a shipping agent/freight carrier (full name, registered address);

declarant (full name, place of location)

validity of the permission for import;

the country of origin of a product;

the country of export;

customs point and date of importation to Ukraine and a list of transportation means;

reference to the decision of the Commission on application of the surveillance or safeguard measures;

an accurate description of imported products;

marking and numbers of products, packages, quantity of such packages, numbers and quantity of packages;

description of products in accordance with Harmonized Commodity Description and Coding System;

gross weight (Kg);

net weight (Kg);

additional units of measurement;

price in accordance with basic conditions of delivery CIF-the boarder of Ukraine in USD or Ecu (Euro);

additional details of product documents;

basic conditions of delivery pursuant to INCOTERMS.

3. A permission to import shall contain the information on the price and volume of products to be imported, reference that such product is subject to application of the surveillance or regional surveillance measures, other conditions and information on imports

5. In case of the assignment of quotas the Commission shall take into account the support of traditional flow of goods and/or the volumes of sales under contracts signed for the imports to Ukraine on which the Ministry and Service have informed the Commission.

6. Unless clear justification is given that a different level is necessary to prevent or remedy serious injury, the quantitative restriction shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available.

(part six of Article 16 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

7. In cases when a quota is allocated among exporting countries such allocation may be agreed with them. If no agreement has been reached, a quota shall be allocated among the exporting countries pursuant to their respective shares in imports to Ukraine, being an object of special investigation, during preceding period.

(part seven of Article 16 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

8. The application of the surveillance measures shall be terminated of the date of making decision by the Commission on application of the safeguard measures.

9. The safeguard measures may be applied to the imports under special investigation throughout the whole territory of Ukraine or in one or several regions of Ukraine. Where the product is about to be delivered to Ukraine its importation to the customs territory of Ukraine shall be permitted provided that:

1) such product shall not be re-addressed by an importer;

2) such product shall be imported to Ukraine on submission by an importer to the customs authority of Ukraine of an appropriate permission to importation of such product, issued pursuant to the Article 15 of this Law.

10. In the process of investigation, the Commission may adopt a decision to discontinue the special investigation without applying special measures. Such decision shall be adopted by majority of votes in the Commission upon submission by the Ministry of conclusions and report on results of the special investigation

(a new part was added to Article 16
according to the Law of Ukraine N 3028-IV of November 1, 2005,
therefore parts ten and eleven shall be considered
parts eleven and twelve)

11. On the Commission's assignment the Ministry shall publish in a newspaper the appropriate announcement and inform the Cabinet of Ministers of Ukraine, Service or an appropriate body of executive power about the decision of the Commission made pursuant to the provisions of this Article.

(part eleven of Article 16 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

12. The Service, national producer or an appropriate body of executive power may require reviewing the aforementioned decision within 30 days of the date of publishing the decision of the Commission.

Pursuant to such request the Commission shall initiate the revision of the aforementioned decision and make decision by a qualified majority vote whether to leave the decision on application of the safeguard measures unchanged, or to amend or nullify such decision.

Article 17. Factors of National Interest

1. A conclusion in the matter of whether national interests require an application of the safeguard measures shall be based on evaluation of all interests, including those of the national producer and consumers, an influence of the imports under special investigation on employment of population, on investments of the national producer and consumers, on international economic interests of Ukraine. Such conclusion pursuant to this Article shall be made, provided that all interested parties have been given an opportunity to express their point of view pursuant to part two of this Article. In this connection special attention shall be paid to the necessity of elimination of the affecting disproportion in trade and restoration of a competition.

The safeguard measures may not be applied if the Commission, on proposal of the Ministry, definitely determines, taking into account all available information that application of such measures contradicts to the national interests.

2. The applicants, importers, their incorporations (associations), consumers and their organizations may, within the terms specified in a notice on initiation of the special investigation, inform on their point of view and submit to the Ministry their comments as to whether the application of the safeguard measures meets the national interests to be accounted in an appropriate decision of the Commission.

Such information or the respective summary thereof may be directed by the Ministry to other parties described in this Article, which may submit their comments thereto.

3. The interested parties may require the hearings to be held by the Ministry. Such requests shall be satisfied if submitted to the Ministry in writing and in the terms fixed in the notice on initiation of a special investigation setting out special, from the point of view national interest, reasons to hold such hearings in the Ministry.

4. The Ministry shall consider the information provided by a party pursuant to part two of this Article and determine to what extent such information is representative. The results of such consideration and determination as to whether the information in question is well substantiated shall be directed to the Commission. The summary of conclusions made by the members of the Commission, which have been reviewed at the hearings of the Commission, shall be taken into account in the Ministry's proposals given to the Commission pursuant to the provisions of this Law.

The information provided pursuant to this Article shall be taken into account if supported by sufficient evidences, which substantiate its impeccability pursuant to the requirements of this Law.

Article 18. Period of Application of the Safeguard Measures

1. Safeguard measures shall be applied only for such period of time as may be necessary to prevent or remedy the consequences of serious injury and to facilitate the process of the national producer's economic adjustment to the conditions of competition. The period may not exceed four years unless it is extended in case where the Commission discovered the existence of circumstances listed in part two of this Article

(part one of Article 18 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

2. The period of application of the safeguard measures necessary to prevent serious injury or remedy serious injury caused to the national producer may be extended by a decision of the Commission if it has been established that:

such extension of the period of application of the safeguard measures is necessary to prevent or remedy serious injury;

(paragraph two of part two of Article 18 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

or there is evidence that the interested national producer is adjusting.

(paragraph three of part two of Article 18 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

The period of application of the special the safeguard measures to the countries – members WTO shall be extended if two conditions illustrated in paragraphs two and three of this part exist.

3. Commission shall make decision on extension of the term for application of safeguard measures by simple majority vote. If the application term of safeguard measures is extended they shall not be of more restrictive character than it was envisaged by previous decision of the Commission.

4. If the period of application of the safeguard measures is over one such measures shall be progressively liberalized at regular intervals during the next periods of application thereof.

(part four of Article 18 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

5. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

(part five of Article 18 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

Article 19. Revision of Safeguard and Surveillance Measures against Imports to Ukraine

1. During the period of application of the safeguard measures, on request of the Service or appropriate body of executive power, the Commission shall hold the hearings.

Paragraph two of part one of Article 19 is deleted.

(according to the Law of Ukraine
N 3028-IV of November 1, 2005)

At such hearings the Commission shall review the consequent impacts of application of the appropriate measures, establish the necessity of increase in pace of liberalization of the imports to Ukraine which is subject to application of the safeguard measures, and necessity of extension of the period thereof.

If the duration of the safeguard measures exceeds three years, such measures shall be subject to liberalization not later than the mid-term of the measures. If appropriate, such measures shall be withdrawn or the pace of liberalization shall be increased.

(a paragraph was added to part one of Article 19
by the Law of Ukraine N 3028-IV of November 1, 2005)

Measures extended according to part two of Article 18 of the present Law shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

(a paragraph was added to part one of Article 19
by the Law of Ukraine N 3028-IV of November 1, 2005)

2. If upon termination of the hearings described in part one of this Article the Commission makes conclusion on the necessity of nullification or revision of the surveillance or safeguard measures illustrated in the Articles 14, 15 and 16 of this Law, it shall make an appropriate decision on nullification or revision thereof.

The Commission shall make such decision by a qualified majority vote. A notice on such decision shall be published by the Ministry in the newspaper.

3. A decision on application of the safeguard measures may be appealed in the court pursuant to the Law of Ukraine within one month of the date of application of such measures.

Article 20. Peculiarities in Application of Safeguard Measures

1. No safeguard measures shall be applied again to the import of a product, which have been subject to such a measure, for a period of time equal to that during which such measure had been previously applied. The period of non-application shall be at least two years.

Safeguard measures may be applied again to the import of a product if:

1) at least one year has elapsed since the date of application of the safeguard measures to the import;

2) such safeguard measures have not been applied to the same import more than twice in the five-year period immediately preceding the date of introduction of such measures.

2. A decision to apply safeguard measures again shall be made by a qualified majority vote of the Commission. Safeguard measures may be applied again to the import of product (products) to Ukraine for the period of up to 180 days. A notice on making such decision by the Commission shall be published by the Ministry in the newspaper.

Article 21. Application of Safeguard Measures to the Import to Ukraine from the Developing Countries – Members of WTO

Safeguard measures shall not be applied against a product imported to Ukraine if it is originated in a developing country – member of WTO provided that the total share of imports thereof to Ukraine does not exceed 3 per cent, at the condition that, collective import share of developing countries – members of WTO is not more than 9 per cent of total imports to Ukraine.

(Article 21 as amended according to