

**DRAFT**  
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**The Law of the Republic of Kazakhstan on Anti-Dumping**

This Law determines the basic notions and principles of anti-dumping legislation, investigation procedures to be held in order to determine dumping and injury and also terms of introduction and termination of anti-dumping measures.

**Chapter 1. General provisions.**

**Article 1. Terms and definitions.**

Current Law shall use the following notions:

"Like product" - a product which is identical, i.e., alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not like in all respects, has characteristics and components closely resembling those of the product under consideration;

"Anti-Dumping investigation" - investigation, in respect of supplier of goods, sold at a price less than its normal price, if such sale causes or threatens to cause injury to domestic producers, producing like products.

"Anti-Dumping measures" - special measures, applied by the Authorized Body in a form of provisional measures and anti-dumping duties for elimination of the injury alleged by sales of the imported goods at a price less than its normal price.

"Related parties" shall mean producers or buyers (participating in the transaction) who are related to the suppliers or are themselves suppliers of the allegedly dumped product. The transaction participators who legally or factually influence the activity of other party are recognized to be related, specifically if :

- one of the participants (individual) or an official of the participant is at the same time the official of the other participant;
- one of them is under direct or indirect control of the other;
- both of them are directly or indirectly controlled by a third person ;
- together they directly or indirectly control a third person;
- they are the owners of the enterprise;
- they are connected with trade relationships;
- one of them is the possessor of the deposit (share) or more than 20% of the voting shares in the equity of the other;
- participants or their officials are close relatives.

"Injury" - material injury to the domestic producers of Kazakhstan, or threat of material injury or material significant retardation of the establishment and expansion of production of like products in the RK because of importation of the dumped product.

"Provisional anti-dumping measures" - preliminary anti-dumping measures, applied by the Authorized Body in respect of dumped product supplier in the form of provisional duty, pledge liability or cash deposit after the initiation of the anti-dumping investigation.

"Dumping" - one of the forms of fighting for consumer markets which means unfair actions of a supplier undertaken in the foreign market through the sale of products at price less than its normal price with the view of eliminating competitors.

"Interested persons (parties)" - foreign exporter, producer or importer of a product subject to anti-dumping investigation, or a trade or business association a majority of the members of which are producers, foreign exporters or importers of such product, the government of the exporting country, a producer of the like product in Kazakhstan or a trade and business association, a majority of the members of which produce the like product in Kazakhstan;

"Domestic industry (producers)" - Kazakhstani producers of the like products whose collective output of these products is considered by the Authorized Body to be sufficient for the anti-dumping investigation to be conducted.

"Supplier" - foreign producer, exporter or importer of the dumped product.

"Regional producers" - aggregate producers of like product in the regional market, under the condition that:

- the producers within such market sell all or almost all of their production of the product in that market ; and
- the Kazakhstani producers from other regions don't provide like product to that region.

Regional market - a market of separate territorial region (oblast) of KazakhstanKazakhstan;

"Customs clearance" - a procedure of allocation of the products under the certain customs regime and the completion of the regime in the accordance with the requirements and provisions of the Customs legislation.

"The Authorized Body" - State Body of RK in charge of conducting the anti-dumping investigation upon application made by the interested parties or on its own initiative.

"Export price" - price actually paid or payable for the goods for which an investigation is initiated.

"Normal price" - price of products actually paid or payable in the ordinary course of trade in the exporting or\and producing country during the sale of the goods which are like to those under anti-dumping investigation.

"Hearings" - one of the anti-dumping investigation procedures, conducted by the Authorized Body, in order to provide interested parties an opportunity to consider disputable issues;

"Official bodies of a Country" - embassy, consulate, trade representative, and other state bodies of the country involved into investigation.

## **Article 2. Sphere of application of the Law**

The current Law shall govern relations : relations of the Authorized Body with interested parties or between different interested parties arising as a result of injury or threat of injury to domestic producers and the RK economic interests by exportation of products for their further sale at a price less than their normal price, to the customs territory of the RK and introduction of anti-dumping measures;

- arising as a result of injury or threat of injury to domestic producers or the RK economic interests by exportation of products and their further sale at a price less than their normal price, to the customs territory of the RK;
- relations of the Authorized Body with interested parties or between different interested parties.

### **Article 3. Goals and Principles of Anti-Dumping Legislation of the Republic of KazakhstanKazakhstan**

1. The goals of anti-dumping legislation shall be protection of domestic producers against unfair competition from suppliers of the like products and elimination of harmful negative consequence for the RK economy.
2. Anti-dumping measures shall be applied only under circumstances when trade practice of suppliers leads to unfair competition.
3. Anti-dumping measures provided for by the provisions of the current Law shall be applied provided that the anti-dumping investigation has been conducted in accordance with the anti-dumping legislation. established rules and provisions herein.

### **Article 4. Legislation of the RK on Anti-Dumping**

1. Legislation of the RK on anti-dumping shall consist of the legislation of the Republic of Kazakhstan and norms of international legislation.

The current Law, other legal acts and the normative acts of the President and Government of the RK adopted in accordance with this Law them, and also the normative legal acts of the Authorized Body Central executive bodies, adopted in the frames of their competence are recognized as the anti-dumping legislation of the Republic of KazakhstanKazakhstan.

2. If an international treaty or agreement ratified by Kazakhstan establishes other rules than the rules contained in this Law, the rules of the international treaty or agreement shall be applied.

## **Chapter 2. State aAnti-dumping control**

### **Article 5. OrganizationOrganisation of State anti-dumping control**

1. The general management of the state anti-dumping control over trade practice of the dumped product suppliers is to shall be exercised by the Government of the Republic of KazakhstanKazakhstan in accordance with the anti-dumping legislation.
2. Direct activity on control and anti-dumping investigation conduction is to shall be enforced by the Authorized Body, determined by the Government of the Republic of KazakhstanKazakhstan.

Introduction, revision and elimination of anti-dumping measures shall be implemented by the decision of the RK Government upon the submission of the Authorized Body.

### **Article 6. The Authorized Body**

1. The Authorized Body operates within the frame of its authority, granted by this Law and on the basis of the Resolution, adopted by the Government of the Republic of KazakhstanKazakhstan.

2. In cases, stipulated by this Law and other legislative acts of the RK , President and Government normative legal acts, The Authorized Body issues in the frame of its competence the normative legal acts on procedures of anti-dumping investigation., conducts investigation in respect of imported dumped products, prepares the materials for submission to the RK Government for introduction of anti-dumping measures.

3. The anti-dumping duties shall be introduced by the decision of the RK Government upon the submission of the Authorized Body.

4. While implementing its functions, the Authorized Body cooperates with the official bodies of other countries and international institutions.

### **Chapter 3. Anti-dumping Investigation**

#### **Article 7. The Subject of Anti-dumping Investigation**

The subject of anti-dumping investigation shall be the import of product at price less than its normal price causing injury to domestic producers of like products.

#### **Article 8. Application on determination of the existence of dumping and injury**

1. Application on determination of the existence of dumping and injury shall be submitted by domestic producers or on behalf of the domestic producers in written form to the Authorized Body.

2. The application shall contain information on the following:

- identity of the applicant(s) (hereinafter applicant) , data on domestic production of the like product by the applicant (volume and prices), and also data on like product production by all domestic producers known to the applicant;
- description of the product, the name of the country of origin or export, information on each known foreign exporter and producer, importer of the product in question;
- information on prices at which the product in question is sold in the markets of countries of origin or export, information on export prices and domestic prices of this like products.
- information on the evolution of the volume of the dumped products, the impact of these imports on prices of the like product in the domestic market and the harmful consequence of these imports.

3. The application is considered to be accepted if the Authorized Body recognizes the evidence provided to be sufficient and notifies the applicant in written form.

When the Authorized Body considers that the information is insufficient, it shall notify the applicant(s) within 10 days and afford the applicant(s) the possibility to revise or supplement the application.

When the applicant revises or amends its application , the time for assessment shall apply as of the date of receiving of the revised or amended application.

4. Obligatory condition for initiating of anti-dumping investigation upon application of the domestic producers is determination by the Authorised Body that this application is supported by those domestic producers whose collective output constitutes more than 50% of all like products manufactured by that part of the domestic industry who expressed its opinion on the application. The share of products produced by domestic producers supporting application should account for more than 25% of

all like products produced by Kazakhstan producers.

#### **Article 10. Initiation of anti-dumping investigation on the initiative of the Authorized Body.**

In case the Authorized Body has sufficient evidence of dumping and injury caused by importation of the dumped product, the Authorized Body has the right to initiate an anti-dumping investigation on its own initiative, in accordance with the procedure established by the RK Government.

#### **Article 11. Grounds for refusal to initiate anti-dumping investigation**

The Authorized Body shall refuse to initiate an anti-dumping investigation on the basis of the application accepted, in case it will be clarified that :

- (a) the margin of dumping is less than 2 per cent, expressed as a percentage of the export price ;
- (b) the volume of dumped eximports and injury is insignificant , i.e. imports of the products from that exporting country under consideration into Kazakhstan represents less than three (3) per cent of imports of the like product into Kazakhstan, unless countries under investigation in respect of which an application was presented collectively account for more than seven (7) per cent of imports of the like product in Kazakhstan.

#### **Article 12. Withdrawal of Application on determination of existence of dumping and injury.**

- 1. Any application may be withdrawn by an applicant prior to initiation or in the process of an anti-dumping investigation. In case, the application has been withdrawn prior to initiation of anti-dumping investigation, it shall be considered not to have been made.
- 2. In case an application has been withdrawn in the process of anti-dumping investigation, the Authorized Body has the right either to continue the investigation on its own initiative or terminate it without measures undertaken.

#### **Article 13. Decision on Initiation of anti-dumping investigation.**

- 1. Any decision to initiate or refuse to initiate an anti-dumping investigation shall be adopted by the Authorized Body within 60 days of the date when the application was accepted.

The decision to initiate or refuse to initiate an anti-dumping investigation shall be made on the basis of all provided data after examination as set forth in Articles 9, 11, 8, 10 of this Law.

The Authorized Body shall notify all interested parties of its decision; in case of refusal, it shall notify of the reasons for not initiating the investigation.

#### **Article 14. Public notice of initiation of anti-dumping investigation**

- 1. When the Authorized Body has decided to initiate an anti-dumping investigation the Authorized Body:
  - a) shall notify the initiation of an anti-dumping investigation to all interested parties;
  - b) shall publish a notice in not less than two periodical editions of the Republican circulation. official mass media.

2. A notification of the initiation of an anti-dumping investigation shall contain information on the following:

- (a) the name of the Authorized Body conducting an anti-dumping investigation;
- (b) the name of the exporting country or countries and the product involved in anti-dumping investigation;
- (c) the date of initiation of the anti-dumping investigation;
- (d) the basis on which dumping existence is proved;
- (e) a summary of the evidences on which the allegation of injury is based;
- (f) the time-limits within which interested parties shall apply for access to the file and make their opinion known and request a hearing. meeting of the interested parties.

#### **Article 15. Disclosure of Application on determination of dumping and injury.**

1. The Authorized Body shall, as soon as the investigation is initiated, provide the full text of the application received to interested parties involved upon their request, but confidential information is not subject to disclosure.

2. Where the number of persons involved is more than five particularly high, the Authorized Body shall have the right to provide the text of the application to the Government official bodies of the exporting and/or producing country(ies), or their embassies or Representative Offices in Kazakhstan.

### **CHAPTER 4. AN ORDER FOR DETERMINATION OF DUMPING**

#### **Article 164. Dumped product. Determination of the normal price of the product.**

1. A product, imported from an other country to Kazakhstan at an export price lower than its normal price shall be considered as dumped. The normal price shall be determined by the Authorized Body on the basis of price if the export price for this product is lower than the price, established in the ordinary course of trade transactions for a like product, being destined for consumption in the exporting and/or producing country.

#### **Article 17. Normal price determination.**

1. Sales between mutually related parties shall not be considered to be performed in the framework of ordinary trade transactions and shall not be taken into account in determining the normal price, except in cases, where evidence proofs have been presented, that the fact of dependence has not influenced the price of the product.

2. In the case where the product is imported to Kazakhstan not from the country of origin, but from other exporting country, the Authorized Body shall determine the normal price, as a rule, on the basis of a price paid or payable in this exporting country ( hereinafter "country of export").

The normal price shall be determined according to the price in the country of origin in the following cases:

- if products are only trans-shipped through the country of export
- like products are not produced in the country of export
- in cases where a comparable price for such products in the country of export is not available.

3. In case of impossibility to determine the normal price of a product, based on prices in the domestic market of the exporting and/or producing country (due to the reasons that sale of like product is not available or such sales do not allow to make appropriate comparison because of a specific market situation or small volume of sales in the domestic market of the exporting and/or producing country, or this is country with non-market economy), the Authorized Body shall determine the dumping margin by means of :

- a) comparing with the comparable price of like products, when exported to a third country, on the condition, that sales of this product are made in sufficient quantity;
- b) comparing with a constructed price, covering production and sales costs, as well as profit determined in accordance with Article 185 of this Law.

4. Sales of a like product may be considered by the Authorized Body to be made in quantity sufficient to determine normal price, if the volume destined for consumption in the domestic market of the exporting and/or producing country constitutes no less than 5% of volume of this product sales to Kazakhstan. The Authorized Body may apply a lower percentage of sale for appropriate comparison if there is an evidence of significance of sales volume.

#### **Article 185 . Calculation of Production Costs and Profit.**

1. The Authorized Body shall make calculations of productions costs on the basis of accounting records of a supplier, in respect of whom an anti-dumping investigation is conducted , under the condition that such records are in conformity with recognized accounting principles and standards of the exporting and/or producing country and accurately reflect the costs, related to production and sale of the product.

2. The Authorized Body shall consider all available evidence of correct allocation of costs , including those submitted by a supplier in the process of anti-dumping investigation, under the condition, that such distribution allocation has been used by the supplier on regular basis, in particular, for the purpose of establishing the appropriate terms and norms of depreciation, capital expenditures and other costs for production development.

3. The Authorized Body shall adjust costs, taking into account non-recurrent items of expenses for production development, or for the period of start-up of production. Adjustments for production start-up shall cover the production costs at the end of production start-up period. In case that period is not within the period of the information examination, the most recent expenses, may be taken into consideration by the Authorized body.

4. The amount of costs as well as profit shall be based on the actual data on production and sales of like product in the process of ordinary trade transactions, provided by a supplier in respect of whom an anti-dumping investigation is conducted. If such amounts cannot be determined on this basis, they shall be determined on the basis of:

- a) actual amounts paid and received by the supplier in question or other supplier in connection with production and sale of like product in the domestic market of the country of origin and/or export;
- b) the weighted average actual amounts, paid and received by other suppliers in respect of whom an anti-dumping investigation is being conducted in connection with the production and sale of like product in the domestic market of the country of origin and/or export.

5. If it is not possible to use either of these methods, the Authorized Body shall have the right to use another reasonable method, but only under the condition that the amount of profit established determined by such method shall not exceed the profit, obtained by other suppliers while selling like products of the same category in the domestic market of the country of origin and/or export.

#### **Article 19. Calculation of Export price.**

1. In cases, when an export price is not available (barter transactions), or when the export price is unreliable in the opinion of the Authorized Body conducting an anti-dumping investigation due to presence of connections or agreement on compensation between an exporter and importer or the third party, the export price shall be constructed on the basis of the price at which the imported products are first resold to a buyer, not dependent on the supplier or the seller.

2. Under circumstances, stipulated by Par. 1 of this Article, while calculating the export price, the Authorized Body shall be entitled to omit all the transactions between the related parties.

#### **Article 20. Comparison of export price and normal price.**

1. The Authorized Body shall make a comparison between the export price and the normal price. Such comparison shall be made at one and the same stage of a trade transaction, usually at the ex factory level, and in respect of sales carried out, if possible, at one and the same time. In each case, all the necessary allowances shall be made, taking into account the differences, which affect comparability of prices, including the difference in terms of imports, taxation, stage of trade transaction, quantity, physical characteristics and also any other differences in respect of which the interested parties provide evidence of their impact upon the price comparability.

2. In cases when the export price is calculated on the basis of a price at which the imported product is resold to an independent buyer for the first time in accordance with Article 186 of this Law, corrections for the expenses, including duties and taxes paid in the period between importation and resale and also for the amount of profit made as the result of the importation and distribution sale of the product shall be included. If in such cases comparability of prices is affected, the Authorized Body shall establish the normal price at the stage of trade transaction equivalent to the stage at which the export price was calculated or shall make necessary allowances foreseen by this Article.

3. The Authorized Body has the right to require the information necessary for such comparison from the interested parties. In each concrete case it establishes the necessary procedure for provision of the evidence by each interested party.



#### **Article 21. Determination of the margin of dumping.**

1. The presence of a margin of dumping shall be determined on the basis of a comparison of a weighted average normal price with a weighted average price of all comparable export transactions, or by comparison of normal price with export prices in each concrete transaction.

2. Normal price determined on the basis of a weighted average may be compared with the prices of concrete export transactions if the Authorized Body finds that the export price is significantly different for different customers, regions or time periods. In such circumstances the Authorized Body shall give an explanation to the interested parties, why such differences can not be taken into account while comparing either weighted average quantities or the concrete transaction prices. A brief explanation shall also be given in the notification on application of provisional measures or anti-dumping duties.

#### **Article 22. The procedure for determination of margin of dumping**

1. The Authorized Body shall determine an individual margin of dumping for each supplier of the product involved in an anti-dumping investigation.

2. In cases when the number of the suppliers or types of products involved in an anti-dumping investigation makes it practically impossible to determine the individual amount of dumping for each of them, the Authorized Body may limit the research by the utilization of a statistically valid selection of suppliers or types of products on the basis of information available to the Authorized Body at the moment of making the selection, or by the highest percentage of exports from the country involved in the anti-dumping investigation.

3. In cases where the Authorized Body restricts the investigation as it is stipulated in this Article, the suppliers not involved in the preliminary selection may also provide data. The Authorized Body determines the individual amount of dumping for each supplier, not involved in the preliminary selection, if he provides the necessary information within the time frame when it is to be taken into consideration during conduction of an anti-dumping investigation, except cases where the large number of the suppliers in case of individual consideration would prolong the anti-dumping investigation period and would interrupt the timely completion of the case.

#### **Article 23. Sales at a price lower then the level of production and sales costs.**

1. The Authorized Body does not consider the sales of the product which is under anti-dumping investigation in the domestic market of the exporting and/or producing country or sales to a third country at prices lower than the level of the production and sales costs per unit of the product as sales made in the ordinary course of trade, because of the under-pricing and does not take into account these sales while determining the normal price in cases these sales took place :

- a) within an extended period of time (up to one year, but not less than six months);
- b) in substantial quantity;
- c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

2. If prices, been lower than the production and sale costs at the moment of sale, and higher then weighted average costs in the period of investigation, the Authorized Body considers such prices as providing for the recovery of all costs within a reasonable period of time.

3. Sales at prices lower then the level of costs per unit are considered as made in substantial quantity if the Authorized Body determines that :

- a) the weighted average sale price in transactions being taken into account in the process of determination of normal price are lower than the weighted average costs per production unit ; or
- b) the volume of sales at prices lower than the production and sales costs per production unit is no less than twenty (20) percent of the volume of sales in transactions being taken into account for the determination of normal price.

3. If prices, been lower than the production and sale costs at the moment of sale, and higher then weighted average costs in the period of investigation, the Authorized Body considers such prices as providing for the recovery of all costs within a reasonable period of time.

#### **Article 24. Currency conversion while determination of dumping.**

If comparison of export price and normal price requires a conversion of currencies, the Authorized Body should make such conversion using objectively justified exchange rate. Normally the date of contract, purchase order, confirmation of the order or invoice is considered as the date of sale, depending on the document determining the terms of the sale.

If export imports is directly linked with the sale of foreign currency, received as payment for this imports, by a supplier in forward markets, the Authorized Body shall take into account the rate of exchange applied for the forward sale of abovementioned currency.

The Authorized Body does not take into account short term fluctuations of the exchange rates. and the suppliers are allowed not less than 60 days for correction of export prices taking into account sustained changes of the exchange rates during the period of examination.

### **CHAPTER 5. DETERMINATION OF INJURY**

#### **Article 25. Principles of injury determination.**

Determination of injury is based on evidence and includes the examination of the volume of dumped imports and its impact on prices of like products in the domestic market and the consequence of such imports for the domestic producers of these products.

#### **Article 26. Cumulated evaluation of injury**

When imports of a product from more then one country isare subject to simultaneously held anti-dumping investigations, the Authorized Body may evaluate the cumulated impact of such imports, if it is determined that: the margin of dumping determined for imports from each country is two and more per cent as of export price and the volume of imports from each country is not negligible as stipulated in Article 110 of this Law and cumulated evaluation of the impact of imports is economically viable both for competition between imported products and between imported products and like products domestically produced.

#### **Article 27. Research of volume and price of dumped product imports.**

1. While examining the volume of dumped product imports the Authorized Body determines whether a significant increase of dumped product imports took place in absolute terms, or relatively to production or consumption in KazakhstanKazakhstan.
2. While examining the impact of the dumped product imports on prices, the Authorized Body determines the degree of under-pricing of such product imports in comparison with the price of like Kazakhstani product or to what degree imports of the dumped product effect the decline of prices or impede the increase which should have taken place otherwise.

#### **Article 285. Evaluation of impact of dumped product imports on domestic producers industry**

1. The examination of the impact of dumped product imports on domestic industryproducers includes evaluation of all economic factors and indexes effecting the position of this production by the Authorized Body, including :
  - actual and potential decline in sales, profit, production, market share, productivity, effectiveness of the investments profit or utilization of facilities;
  - factors affecting the prices in the domestic market;
  - margin of dumping;
  - actual and potential impact on cash flows, inventories, employment, wages, growth rate, opportunity to attract capital or investments.
2. In order to provide comparativeness of the production conditions of the dumped product and like product in KazakhstanKazakhstan, and also to exclude the impact of other factors, not stipulated by dumped product imports, the Authorized Body shall run the research of domestic production of like product examining the production-technological process, sales of like product by domestic producers and profit.

When the Authorized Body has no such data on the group of like products domestically produced, the impact of dumped product imports shall be evaluated by examination of the domestic production of the narrower nomenclature of products, included in like products group, for which necessary information can be provided.

#### **Article 29. Determination Evidence of injury**

1. The Authorized Body must determinemonstrate on the basis of actual data that imports of the dumped product causes injury to domestic producers as a result of dumping. The causal link between imports of the dumped product and injury to domestic producers shall be demonstrated determined by the Authorized Body by using any actual data provided by interested persons.
2. In addition to imports of the dumped product, the Authorized Body shall examine other known factors which at the same time caused injury to domestic producers. But such injury shall not be considered as a result of dumped imports. These factors, include, specifically, volume and prices of imports, which were not sold at dumped prices, reduction of demand or changes in consumption structure, restrictive trade practices and competition between foreign and domestic producers, achievements in technology and also the export performance and effectiveness of domestic industry. Such injury determined shall not be considered as a result of dumped imports.

### **Article 30. Injury to regional producers**

When there is a concentration of dumped product imports in separate regional market of Kazakhstan and these imports cause injury to the domestic regional producers the Authorized Body has the right to conduct anti-dumping investigation in accordance with the provisions of this Law, in respect of that region.

### **Article 31. Threat of material injury.**

1. The Authorized Body shall justify its determination of a threat of material injury to domestic producers caused by dumped product imports on the basis of analysis of the following factors :

- a) a significant growth of dumped product imports in the domestic market, pointing to the possibility of a further significant increase in imports;
- b) the supplier has sufficient export capacity or inevitable significant increase of export opportunities indicating the possibility of a significant further increase in imports of dumped product to Kazakhstan. In this case shall be taken into consideration the possibility for other export markets to absorb proposed volume of additional imports;
- c) imports at prices which will have a significant declining or depressing influence on the prices in the domestic market, which may increase the demand for additional imports;
- d) inventories of products in country of export and/or production, in respect of which an anti-dumping investigation is held.

## **CHAPTER 6. THE PROCEDURE OF THE ANTI-DUMPING INVESTIGATION**

### **Article 32. Duration of Investigation**

The duration of Authorized Body shall conclude investigations on dumping or injury within is one year. In special circumstances , when, on decision of the Authorized Body, it can be prolonged for additional 6 months.

### **Article 33. Information on Anti-Dumping Investigation**

1. Upon initiation of the anti-dumping investigation, the Authorized Body shall send questionnaires to all interested parties.

The interested parties shall be given thirty days for reply. This time limit can be prolonged by the Authorized Body, but not more than for additional thirty days. The questionnaire shall be deemed to have been received seven days from the day on which it was sent to the respondent or transmitted to an official representative of the interested party.

During the anti-dumping investigation, the Authorized Body can request additional information from the interested parties, mentioning the timeframe for provision of such information.

2. Each interested party shall be given ample opportunity to present in writing any other evidence which it considers relevant. Written evidence shall nonetheless not be accepted after a period of 10 days following the hearings meetings of the interested parties, stipulated by Article 385 of this Law.

#### **Article 34. Confidentiality of information on Anti-Dumping investigation**

1. Any information which is provided to the Authorized Body as confidential during the anti-dumping investigation, shall not be disclosed without written permission of the party submitting it.
2. The party providing confidential information shall furnish non-confidential explanatory note thereof.

This explanatory note shall be made in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence or give an explanation why provision of such non-confidential explanatory note is impossible.

3. If the Authorized Body determines finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure, the Authorized Body may disregard such information unless it is demonstrated that the information is correct.
4. The person responsible for disclosure of confidential information shall be treated in accordance with current RK legislation.

#### **Article 35. Verification of Information provided in accordance with anti-dumping investigation procedures**

1. In order to verify information provided or to obtain further details, the Authorized Body may carry out investigations in other countries as required, provided it obtains the agreement of the relevant exporters and/or producers concerned and provided it notifies the official bodies representatives of the government of the country in question and unless the latter object to the investigation. Anti-dumping investigation on the territory of countries-members of WTO shall be performed in accordance with procedures provided for by WTO.
2. In order to examine information on dumping the Authorized Body shall select an investigation period from six months to one year immediately preceding the date of initiation of the investigation and information regarding injury shall normally be examined for a period of up to four three years.

#### **Article 36. Reliance on Available Information on Anti-Dumping Investigation**

In cases in which any interested party does not provide, necessary information within the period of time prescribed by the Authorized Body or otherwise significantly impedes the investigation the, the Authorized Body may reach determinations, on the basis of the information available.

#### **Article 37. Filing**

1. The Authorized Body shall maintain a file relating to each anti-dumping investigation in accordance with the established by it procedure. All documents relating to the concrete anti-dumping investigation shall be filed, period of keeping shall be determined by the Authorized Body. established procedure.
2. The interested parties have the right to review the information on the anti-dumping investigation held by the Authorized Body, which is not confidential. file shall be available to the interested parties review on their demand throughout the course of the anti-dumping investigation or reconsideration.

#### **Article 38. Hearings Meetings of the interested parties.**

1. During the anti-dumping investigation the Authorized Body must provide the interested persons with an opportunity to meet adverse parties in order to discuss investigation materials and provide additional information. Interested parties shall be entitled to request the Authorized Body for a hearing on the case in order to review the materials of the case and arguments of adverse parties.
2. If one of the interested parties is not present at the meeting it shall not result in injury to its interests during the investigation conduction. Hearings shall be chaired by an official of the Authorized Body who shall ensure that confidentiality is preserved to the extent necessary. The officials of the Authorized Body and witnesses for an interested parties shall participate in hearings, provided that the interested party notifies in advance the names of the witnesses. Each party shall be entitled to one hearing to be held.
3. All interested parties shall be entitled to provide additional evidence to the Authorized Body, within 10 days after the Authorized Body has held a hearings.
4. The Authorized Body may hold additional hearings, in case requests of interested parties for additional hearings shall be duly justified.
5. The Authorized Body runs the protocol of the hearings. Interested parties have the right to provide additional information during the hearings. Oral information provided in accordance with item 1 of this Article, shall be taken into account by the Authorized Body only insofar as it is subsequently reproduced confirmed in writing.

#### **Article 39. Preliminary affirmative determination and imposition of provisional measures.**

1. On the basis of facts, received during the anti-dumping investigation, the Authorized Body shall make preliminary affirmative determination on the presence of dumping and injury to the domestic producers

#### **Article 40. Provisional measures and procedures of their imposition**

1. After preliminary affirmative determination the Authorized Body shall inform all interested parties and official representatives of their countries of its intention to impose provisional measures. All involved parties shall be granted 10 days after notification to comment in writing on the reasons for the imposition of provisional measures., which shall be taken into account or not by the Authorized Body while preparing the Government decision on imposition of provisional measures.
2. Decision on imposition of provisional measures shall be made by the RK Government upon the submission of the Authorized Body, on the basis of preliminary affirmative determination on dumping and injury. Provisional anti-dumping measures in the form of cash deposit or pledge liability shall be undertaken in respect of the supplier only after preliminary affirmative determination and not sooner than 60 days from the date of initiation of the investigation.
3. Provisional anti-dumping measures in the form of provisional duty, cash deposit or pledge liability shall be undertaken in respect of the supplier not sooner than 60 days from the date of initiation of the investigation.

4. Provisional anti-dumping measures shall be imposed by the Customs Authorities only on producers of dumped products entered for consumption into the customs territory of Kazakhstan after the date of publication of the Government decision imposing provisional measures.

#### **Article 41. Public Notice of Imposition of Provisional Measures**

The Government Resolution on imposition of provisional measures shall be published at least in two official mass media editions of the Republican circulation.

Such a notice shall contain the following information:

- the names of the suppliers, or the supplying countries involved;
- a detailed description of the product (which is sufficient for customs purposes);
- determined dumping amount and a full explanation of the reasons for the calculation methodology applied used in the calculations
- criteria of the injury evaluationdetermination;
- the main reasons leading to the provisional measures imposition;
- rate of provisional anti-dumping duty and time limits for its application any other information which is appropriate for the understanding of the factual and legal situation.

The Public notice shall not contain confidential information.

#### **Article 42. Duration of Application of Provisional Anti-Dumping Measures**

Provisional anti-dumping measures shall be applied for a period not exceeding six months; in case of low duty, that does not cover compensate the elimination of injury during six months, the period of application of provisional measures can be extended for a period up to nine months.

#### **Article 43. Customs clearance of dumped product**

An anti-dumping proceeding shall not hinder the procedures of customs clearance of dumped product.

### **Chapter 7. Conclusion of the anti-dumping investigation**

#### **Article 44. Conclusion of the anti-dumping investigation**

1. Not later than one month before a final decision is made, the Authorized Body shall inform all interested parties of the relevant main facts, on basis of which the final decision will be made. Interested parties shall be granted 15 days to provide their comments on the facts mentioned to the Authorized Body.

2. Anti-dumping investigations held by the Authorized Body on dumping, injury and connections therewith causal link can result in:

- termination of investigation without measures undertaken;

- price undertakings of exporter and/or producer;
- imposition of anti-dumping duties.

#### **Article 45. Grounds for Termination of the anti-dumping investigation without measures undertaken**

1. An anti-dumping investigation shall be terminated without measures undertaken as soon as it will be determined that: if :
  - (a) there is not sufficient evidence of either dumping or of injury;
  - (b) the margin of dumping is less than two per cent of export price or, that the volume of dumped imports (actual or potential), or the injury, is negligible in accordance with this Law.
2. Notification on termination of investigation without measures undertaken shall be published in official mass media.

#### **Article 46. Assessment of anti-dumping duties.**

1. The amount of the anti-dumping duty shall be sufficient for the elimination of the harmful consequence of dumping. The amount of anti-dumping duty shall not exceed the margin of dumping.
2. In case the amount paid in respect of provisional measures imposition is higher than the margin of dumping, the supplier has a right for refund in accordance with legally established procedures.

#### **Article 47. Introduction of anti-dumping duties.**

1. Decision on introduction of anti-dumping duties and rate thereof shall be adopted by the RK Government upon the proposal of the Authorized Body and shall be applicable at the date of its publication in official mass media.

In the decision the supplier or suppliers of the dumped product shall be named.

If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, only the supplying country concerned shall be named.

If several suppliers from more than one country are involved, either all the suppliers involved may be named, if this is impracticable, all the supplying countries involved.

2. The publication shall contain the relevant information described in Article 37 of this Law, as well as the reasons for the acceptance or rejection of arguments or claims made by the suppliers.
3. On the basis of the Resolution of the RK Government on imposition of anti-dumping duties, the Customs Authorities of the RK shall collect them on all imports in respect of which an anti-dumping investigation has been held, except as to the suppliers from which price undertakings have been accepted.

#### **Article 48. Investigation in respect of third parties**

1. If after the completion of the anti-dumping investigation third party not related to other suppliers of the product subject to anti-dumping duties starts exportation of like product an anti-dumping investigation in respect of him, shall be initiated within 30 days and completed no later than 12 months after the receipt of the application.



2. During the anti-dumping investigation, anti-dumping duties shall not be applied in respect of this third party, but provisional anti-dumping measures can be imposed in accordance with the procedures established by this Law.

#### **Article 49. Retroactivity**

1. No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the anti-dumping investigation

2. Anti-Dumping duties and provisional measures shall be applied only to the products entered for consumption after adoption and effectiveness of relevant decisions, with exception of cases stipulated in items 3) and 4) of this Article.

3. Anti-Dumping duties shall be applied from the date of introduction of the provisional measures when those measures have been applied to the concerned product on the basis of preliminary affirmative determination of an injury or a threat of injury to the domestic producers have been made and the relevant decision of the RK Government.

4. An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures if during anti-dumping investigation it was determined that :

- (a) there is a history of dumping which caused injury;
- (b) the injury, caused by massive dumped imports of a product in a relatively short time is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

#### **Article 50. Anti-dumping duties period of validity**

Anti-dumping duties shall be effective not more than five years from its imposition or last reconsideration. Procedure of preparation of reconsideration of anti-dumping duty shall be provided by the Authorized Body on its own initiative or upon a request made by the domestic producers, within 45 days from the notice of its impending termination. If it will be determined that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the Authorized Body shall appeal before the RK Government to prolong the application of the anti-dumping duty.

### **CHAPTER 8. PRICE UNDERTAKINGS**

#### **Article 51. Conditions for acceptance of Price undertaking**

1. Anti-dumping investigation may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of voluntary undertakings from any person involved in anti-dumping investigation to revise its prices or to cease exports to Kazakhstan at dumped prices so to eliminate the injurious effect of the dumping.

2. The Authorized Body has no right to require that price increases under such undertakings shall be higher than the determined margin of dumping. Price increases may be less than the dumping margin if the Authorized Body determines that such increase will be sufficient to eliminate the injury to the domestic producers.

3. Price undertakings may be suggested by the Authorized Body, but supplier shall not be forced to

enter into such an undertaking.

**Article 52. Conditions for acceptance of price undertaking**

1. Price undertakings shall be accepted adopted by the Authorized Body only after it has made, in accordance with Article 396 of this Law, preliminary affirmative determination of dumping and injury caused by such dumping.
2. Undertakings cannot be accepted if the Authorized Body considers their acceptance impractical as the number of actual or potential exporters is too great, or for other reasons, including political, and the Authorized Body shall inform the supplier of this reasons.

**Article 53. Control over price undertakings**

1. The Authorized Body may require any supplier from whom undertakings have been accepted to provide periodically the data relevant to the fulfillment of such price undertakings, and to held verification of pertinent data.
2. In case of violation of undertakings by the supplier, the RK Government upon the proposal of the Authorized Body may take immediately application of provisional measures without notification.

**Article 54. Mechanism of undertakings.**

1. The Authorized Body has the right to terminate investigation in cases where a supplier fairly implements his undertakings.

2. The Authorized Body may proceed with an anti-dumping investigation upon the acceptance of a price undertaking in order to determine the dumping and injury on its own initiative or on demand of a supplier who accepted price undertakings.

3. A price undertaking shall be removed by the Authorized Body in case no dumping or injury has been found, with exception of cases when such lack of dumping or injury is a result of the price undertaking.

4. Price undertakings shall be effective until the elimination of injury of dumping.

#### **Article 55. Public Notice of the Acceptance of a Price Undertaking.**

1. As soon as a price undertaking is accepted adopted, notification shall be sent to all interested parties, providing the provisions of Article 341 of this Law.

2. A price undertaking shall become effective 7 days after it was sent to the respondent or transmitted to the representatives of the interested parties.

#### **Article 51. Assessment of anti-dumping duties.**

1. The amount of the anti-dumping duty shall be sufficient for the elimination of the harmful consequence of dumping. The amount of anti-dumping duty shall not exceed the margin of dumping.

2. In case the amount paid in respect of provisional measures imposition is higher than the margin of dumping, the supplier has a right for refund in accordance with legally established procedures.

#### **Article 52. Introduction of anti-dumping duties.**

1. Decision on introduction of anti-dumping duties and rate thereof shall be adopted by the RK Government upon the proposal of the Authorized Body and shall be applicable at the date of its publication at least in two mass media editions of Republican circulation. The notice shall contain the relevant information described in Article 41 of this Law, as well as the reasons for the acceptance or rejection of arguments or claims made by the suppliers.

2. In the Resolution of the RK Government on imposition of anti-dumping duties the supplier or suppliers of the dumped product shall be named.

If several suppliers from the same country are involved, and it is impracticable to name all these suppliers, only the supplying country concerned shall be named.

If several suppliers from more than one country are involved, either all the suppliers involved may be named, if this is impracticable, all the supplying countries involved.

3. On the basis of the Resolution of the RK Government on imposition of anti-dumping duties, the Customs Authorities of the RK shall collect them on all imports in respect of which an anti-dumping investigation has been held, except as to the suppliers from which price undertakings have been accepted.

### **Article 53. Investigation in respect of third parties**

1. If after the completion of the anti-dumping investigation third party not related to other suppliers of the product concerned starts exportation of like product an anti-dumping investigation in respect of him, shall be initiated within 30 days and completed no later than 12 months after the receipt of the application.
2. During the anti-dumping investigation, anti-dumping duties shall not be applied in respect of this third party, but provisional anti-dumping measures can be imposed in accordance with the procedures established by this Law.

### **Article 54. Timeframes determined in the Law**

1. No duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the anti-dumping investigation.
2. Anti-Dumping duties and provisional measures shall be applied to the products entered for consumption after publication and effectiveness of relevant decisions , with exception of cases stipulated in items 3) and 4) of this Article.
3. Anti-Dumping duties can be imposed from the date of introduction of the provisional measures only in cases that measures have been applied to the concerned product and the Authorized Body have made preliminary affirmative determination of an injury or a threat of injury to the domestic producers.
4. An anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures with exception of the products imported before the violation of price undertakings if during anti-dumping investigation it was determined that :
  - (a) there is a history of dumping which caused injury;
  - (b) the injury, caused by massive dumped imports of a product in a relatively short time is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

In case, there is an evidence on facts, mentioned in items a) and b) of Item 4 of this Article, the Authorized Body shall terminate the anti-dumping investigation and makes affirmative final determination on introduction of anti-dumping duties.

### **Article 55. Anti-dumping duties period of validity**

Anti-dumping duties shall be effective not more than five years from its imposition or last reconsideration. Reconsideration of anti-dumping duty shall be provided by the Authorized Body on its own initiative or upon a request made by or on behalf of the domestic producers, within 45 days from the notice of its impending termination. If it will be determined that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury, the Authorized Body shall appeal before the RK Government to prolong the application of the anti-dumping duty.

## **CHAPTER 9. FINAL PROVISIONS**

### **Article 56. Conditions and procedures for the termination cancellation of provisional anti-dumping measures**

1. If the amount of effective provisional anti-dumping measures is less than the anti-dumping duty imposed, the difference shall not be collected, in case it is more, upon the desire of the supplier the difference shall be reimbursed in accordance with legally established order.
2. Upon the determination of a threat of injury an anti-dumping duty may be applied only from the date of the determination of threat of injury and effective provisional measures shall be terminated and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released
3. Where a final determination on dumping and injury is negative during an anti-dumping investigation, all provisional measures shall be terminated within 10 days, any amounts collected shall be reimbursed within 30 days in accordance with the established procedure.

### **Article 57. Termination or Rreview of Anti-dumping Measures**

The Authorized Body may any time on its own initiative or upon the initiative of interested parties, if there are evidence that product recognized earlier as been dumped is imported at the price equal or close to its normal price which reduces or eliminates the injury and dumping, examine whether the continued imposition of the duty is necessary or can be revised.

If it will be deetermined that the anti- the dumping duty applied is not warranted, the Authorized Body shall introduce the draft Decision on its termination or the amount revision to the RK Government

### **Article 58. Customs clearance of dumped product**

An anti-dumping proceeding shall not hinder the procedures of customs clearance of dumped product.

### **Article 59. Appellation procedure**

Any actions and Ddecisions made during the anti-dumping investigation by the Authorized Body in accordance with this Law can be appealed by interested parties in court. , under the procedure stipulated by the RK legislation.

### **Article 60. Coming into force**

Current Law shall come into force after the moment of its signing.

President of the RK Republic  
Almaty \_\_\_\_\_ 1997.

N. Nazarbaev.