

**LAW OF THE REPUBLIC OF KAZAKSTAN
"ON SAFEGUARD MEASURES"**

The current Law shall establish main notions and principles of legislation being applied with the view of protecting economic interests and economic safety of the Republic of Kazakhstan through control of trade and economic relations as well as the procedure of investigation on determination of injury and introduction of safeguard measures..

CHAPTER 1. GENERAL PROVISIONS

Article 1. Sphere of Application of the Present Law

1. The present Law shall govern relations arising out of import of any products being imported into the customs territory of the Republic of Kazakhstan in such quantities absolute or relative to domestic production and under such conditions as to cause or threaten to cause injury to the domestic producers of like products as well as to the interests of the Republic of Kazakhstan.

2. The present Law shall govern relations between suppliers of products and domestic producers of like products as well as between Authorized Body and all interested parties.

Article 2. Purposes and Principles of Application of the Present Law

1. The purpose of current Law shall be protection of interests of domestic producers and elimination of injury or threat of it for the economy of the Republic of Kazakhstan.

2. Safeguard measures shall be applied by the Authorized Body only under the condition as to cause or threaten to cause injury to domestic producers as well as to economic interests of the Republic of Kazakhstan.

3. Safeguard measures shall be applied only following an investigation pursuant to the procedures established by present Law.

4. Safeguard measures shall be applied to a product being imported irrespective of its source.

5. As safeguard measures shall be applied only those that are stipulated by current Law. Such measures as voluntary export restriction, orderly marketing arrangement, and other similar measures applied to export or import shall not be applied as safeguard measures.

Article 3. Legislation of the Republic of Kazakhstan on Safeguard Measures.

1. Current Law, other legislative acts and adopted in conformity with them normative legal acts of the President and the Government of the Republic of Kazakhstan as well as the normative legal acts of central executive bodies adopted within their competence shall refer to the legislation of the Republic of Kazakhstan.

2. If International Agreement or Treaty to which the Republic of Kazakhstan is a participant, shall establish rules different from rules of this Law, the rules of International Agreement or Treaty shall be applied.

Article 4. Terms and Definitions.

"WTO" - World Trade Organization;

"Injury" - significant impairment of the economic position of separate domestic producers.

"Provisional measures" - preliminary safeguard measures in the form of safeguard customs duties applied by the Customs Authorities on the basis of the decision of the Government of the Republic of Kazakhstan;

"GATT" - General Agreement on Tariffs and Trade;

"Interested parties" - an exporter, foreign producer, an importer of a product subject to investigation or a trade, industrial association a majority of the members of which are producers, exporters or importers of such product, the Government of an exporting country, producer of like product in Kazakhstan or a trade and industrial association, an association for protection of Consumers.

"Safeguard measures" - a complex of administrative and financial measures applied by Customs authorities on the basis of Decrees of the Government of the Republic of Kazakhstan in the form of safeguard duties or/and quotes to supplies of products imported to the customs territory of the Republic of Kazakhstan in such quantities absolute or relative to domestic producers and under such conditions as to cause injury or threat of injury to domestic producers of like products.

"Quota" - quantitative restriction on import of a product determined by the Authorized Body that shall be introduced by Customs authorities on the basis of the Decree of the Government of the Republic of Kazakhstan;

"Committee" - Committee on WTO's safeguard measures.

"Domestic producers" - all Kazakhstan producers of like products operating within the territory of the Republic of Kazakhstan, or those whose collective output of like products constitutes a major proportion of the total domestic production of those products;

"Like products" - identical or similar products:

- identical products - products identical in all respects;
- similar products - products not identical in all respects but having similar characteristics and consisting of similar components;

"Supplier" - producer, exporter or importer of products;

"Investigation" - procedure of considering documents and evidences regarding importation of any product to the customs territory of the Republic of Kazakhstan in such quantities and under such conditions as to cause injury to the domestic producers of like products;

"Council" - Council on WTO's trade.

"Safeguard duties" - one type of customs duties applied on the basis of the Decree of the Republic of Kazakhstan by Customs bodies of the Republic of Kazakhstan in case of importation of products to the customs territory of the Republic of Kazakhstan in such quantities and under such conditions as to cause injury or threat of injury to domestic producers of Kazakhstan;

"Threat of injury" - imminent impairment of economic position of domestic producers in future;

"Authorized Body" - state body of the Republic of Kazakhstan authorized to conduct investigation either upon the application of domestic producers or at its own initiative.

CHAPTER 2. STATE CONTROL

Article 5. Bodies of State Control

1. General management on the state control over trade practice of suppliers shall be carried out by the Government of the Republic of Kazakhstan.
2. Direct activities on conducting investigation shall be carried out by the Authorized Body, determined by the Government of the Republic of Kazakhstan.
3. Introduction, revision and phasing out of safeguard measures shall be carried on the basis of the decision of the Government of the Republic of Kazakhstan upon request of the Authorised Body.

Article 6. Authorized Body.

1. The Authorized Body shall act within the frameworks of authorities vested in it by the this Law and on the basis of the Provision approved by the Government of the Republic of Kazakhstan.
2. In cases stipulated by the current Law, other legislative acts of the Republic of Kazakhstan, normative-legal acts of the President and Government of the Republic of Kazakhstan the Authorized Body shall publish, within the limits of its competence, normative legal acts on investigation procedures, conduct investigation upon application of domestic producers, prepare documents for submission to the Government of the Republic of Kazakhstan to take safeguard measures.
3. While carrying out its functions the Authorized Body shall cooperate with Authorized bodies of other countries and international organizations.

CHAPTER 3. INITIATION OF INVESTIGATION

Article 7. Submission of Application.

1. An application to conduct investigation on facts as to cause injury or threat of injury by import of product shall be submitted by or on behalf of domestic producers of like products to the Authorized Body.
2. An application shall contain the following information:
 - identity of the applicant and data on value and production volume of like products by the applicant;
 - a complete description of product, the names of the country or countries of origin or export, list of known suppliers of product in question;
 - evidences with regard to the existence, nature or other terms of supplies known to the applicant;
 - the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by product in question, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.
 - the rate of price changes of like product at the domestic market of the Republic of Kazakhstan and consequent impact on domestic producers as demonstrated by relevant evidence;
 - list of all known domestic producers of like product and available information on cost and production level of like product falling to the share of producers in question.

2. Any application can be withdrawn before the initiation of the investigation and in this case, it shall be regarded as non-submitted.

3. In case if there is a sufficient evidence of injury or threat of injury caused by import of any products, the Authorized Body can decide to initiate an investigation at its own initiative without having received a written application.

Article 8. Consideration of an Application.

1. Within 30 days after the application has been submitted, the Authorized Body shall examine accuracy and adequacy of the evidence provided in the application and take a decision whether or not to initiate investigation.

2. If the Authorized Body considers the submitted information as not-accurate and not adequate, it shall notify an applicant it within 30 days from the day of receipt of the application. In case if an Applicant changes or introduces amendments to his application, the period of consideration of the application shall be counted from the day of receipt of the amendments and changes.

3. As soon as the decision to initiate an investigation has been taken the Authorized Body shall publish the notification in the Republican press, inform all interested parties and invite them to meet parties with adverse interests.

4. The Authorized Body shall take the decision not to initiate investigation if there is not sufficient evidence on import of products or there is no injury or threat of injury;

5. As soon as the decision not to initiate the investigation shall be made the Authorized Body must notify an applicant stating the reasons for rejection.

Article 9. Notification

1. In the process of investigation an Authorized Body shall give notice to the Committee on following:

- a) initiation of investigation;
- b) determination of injury or its threat;
- c) introduction of provisional measures;
- d) taking a decision on introduction or extension of safeguard measures;

2. Notification on investigation shall contain all relevant information in respect of investigation that includes evidence of injury or its threat as a result of increased imports, accurate description of a product, proposed safeguard measure, date of introduction and its duration and schedule of gradual decrease of its amount / size.

3. In addition, the Authorized Body shall notify the Committee of all Laws, Decrees, administrative acts relating to safeguard measures as well as any modifications made to them.

Article 10. Review of an Application

1. As soon as an investigation has been initiated the Authorized Body shall provide full text of an application to all interested parties upon their request, and confidential information shall not be disclosed.

CHAPTER 4. CONDUCTING OF INVESTIGATION

Article 11. Period of Investigation

Investigation shall be concluded within six month. In special circumstances the period of investigation shall be extended by the Authorised Body up to three months.

Article 12. Request for Information

1. As soon as an investigation has been initiated the Authorized Body shall give notice to all interested parties of the information which it requires.

Interested parties shall be given 20 days for reply. This period can be extended by Authorised Body but not more than for 10 days. The notice shall be regarded as received in 5 days after it has been sent by mail or transferred to a representative of an interested party.

In the course of an investigation the Authorized Body can require additional information from interested parties, having established the deadline for providing an answer.

2. Every interested party shall have right to present in writing all evidences which it considers relevant in respect of the investigation in question..

Article 13. Confidentiality

1. Information presented as confidential to the Authorized Body in the course of an investigation shall, upon good cause shown, be treated as such and in no case shall be disclosed without written permission of the party submitting it.

2. A party providing confidential information shall furnish non-confidential summary thereof.

Summary shall be in sufficient detail to permit a reasonable understanding of the substance of information, or it must state the reasons why the summarization is not possible.

3. If the Authorized Body finds that the request for confidentiality is not warranted or if a supplier of the information, is either unwilling to make the information public or to authorise its disclosure in summary, the Authorised Body may disregard such information unless it shall be demonstrated that the information is correct.

4. A person responsible for disclosure of confidential information, shall bear the responsibility in accordance with the acting legislation of the Republic of Kazakhstan.

Article 14. An Order to Keep a File

1. For every case of investigation an Authorized Body shall keep a file in writing according to established procedure. The file shall contain all documents relevant to investigation and the period of keeping those documents shall be determined according to established order..

2. All documents shall be provided to interested parties upon their request during investigation and case revision.

3. An Authorized Body shall publish a report on the case under investigation. The report shall contain a detailed analysis of the case with justification of the decision. As a rule, the report shall be published within 6 months after completion of investigation.

Article 15. Hearings

1. Interested persons/entities shall have the right to submit a request to the Authorized Body for holding hearing so that to get to know the documents relevant to investigation and rebuttal arguments offered by other party.
2. Hearings shall be chaired by an official of the Authorised Body who shall ensure that the confidentiality is preserved. Representatives of the Authorized Body, parties and other persons/entities whose participation is necessary shall be at hearing.
3. Interested parties shall have the right to require additional hearings. If the request is duly justified the Authorized Body shall hold additional hearings.
4. Throughout the hearing, shall be kept a record. Interested parties shall have the right to submit additional information orally. Oral information provided in accordance with requirements of this article shall be taken into account insofar as it is subsequently reproduced in writing.

Article 16. Determination of Injury

When factors other than increased imports are causing injury to the domestic producers, such injury shall not be attributed to increased imports.

Article 17. Preliminary Affirmative Determination

When the fact of injury or threat from the increased imports of a product shall be proved with evidence received in the course of investigation the Authorized Body shall make a preliminary affirmative determination that is a ground for application of provisional safeguard measures.

Article 18. Application of Provisional Measures

1. Provisional measures shall be applied in the form of a safeguard duty for a product under investigation.
2. Provisional safeguard duties shall be applied by Customs authorities on the basis of a Decree of the Government of the Republic of Kazakhstan after the preliminary affirmative determination of injury or threat of injury was made by the Authorized Body and request regarding application of provisional measures has been submitted to the Government of the Republic of Kazakhstan.
3. Notification on application of provisional measures must be sent to all interested parties and official representatives of their countries 30 days before application of those measures,. During 10 days after the notification parties involved into the investigation shall have the right to comment in writing on the reasons of imposition of provisional measures.
4. The size of provisional safeguard duties should not exceed the preliminary established total amount of supposed and caused injury but it can be less than this amount if this smaller amount is sufficient to remedy injury caused to domestic producers or economy of the Republic of Kazakhstan. Provisional measures shall be phased out in 10 days as soon as it has been found that there is no injury

Article 19. Publication of a Decision on Imposition of Provisional Measures

Provisional measures shall come into force from the date of publication of a decision on application of provisional measures in the Republican press. The publication shall contain the following data:

- names of suppliers and countries from where the product is imported;
- detailed description of the product (sufficient for customs purposes);
- criteria of injury estimation;
- main grounds for applying provisional measures;
- other information necessary for understanding actual circumstances and legal aspects;

The publication shall not contain confidential information.

Article 20. Period of validity of provisional measures.

1. The period of validity of provisional measures should not exceed 7 months.
2. The period of validity of provisional measures shall be included into the total period of validity of safeguard measures in accordance with the Article 29 of the this Law.

CHAPTER 5. COMPLETION OF INVESTIGATION

Article 21. Completion of investigation.

1. The Authorized Body shall present main facts on the basis of which the decision will be taken to all interested parties not later than a month before the final decision is taken.

Interested parties shall be provided with 15 days for submitting their remarks on the mentioned facts.

2. An Investigation conducted by the Authorized Body on determination of injury from supplies of products shall be completed with taking the following decisions:

- termination of investigation without undertaking measures;
- application of safeguard measures.

Article 22. Grounds for termination of investigation without undertaking measures.

An investigation shall terminate without undertaking measures in case if it is revealed that there is no sufficient evidence of injury or threat of injury from supplies of a product under investigation.

Article 23. Safeguard measures.

1. Decision on applying safeguard measures shall be taken by the Government of the Republic of Kazakhstan on the basis of the affirmative determination of the Authorized Body after the completion of investigation.
2. Safeguard measures shall be applied in the form of restriction on quantities of imported product - establishment of quota, or by means of introduction of a safeguard duty.
3. Information on the application of safeguard measures should be submitted by the Authorized Body to the Committee.

Article 24. Procedure of applying safeguard measures.

1. Safeguard measures can be applied again to products to which they were already applied only if the period of application of safeguard measures did not exceed 2 years.

Provided the period of application is more than two years, no safeguard measures shall be applied again for a period of time equal to that during which such measures had been previously applied.

2. Safeguard measures can be applied again to a product if the initial term of validity is 6 months under the following conditions:

- a) at least 1 year has elapsed since the date of introduction of safeguard measure;
- b) such a safeguard measure has not been applied on the same product more than twice in the five- year period preceding the last date of introduction of the measure.

3. Safeguard measures shall not be applied against a product originating in a developing country as long as its share does not exceed 3 per cent of the total import of the product concerned to Kazakhstan with the exception when collective import from those countries accounts for more than 9 per cent of total imports of product under investigation.

4. Authorised Body while determining the threat of injury shall apply safeguard measures only since the determination of threat of injury is made and provisional measures shall be taken into account at calculating the amount of safeguard measures.

Article 25. Quotas.

1. Quotas shall be allocated by the Government of the Republic of Kazakhstan
2. Quotas can be allocated proportionally to shares of previous supplies.
3. Quotas can be allocated disproportionately to shares of previous supplies provided that consultations are conducted under the auspices of the Committee and following has been demonstrated to the Committee:
 - a disproportional increase of volumes of supplies of one supplier in relation to the total increase of supplies;
 - the reason of disproportional allocation of quotas are justified
4. In case the Authorized Body determined a threat of injury to domestic producers, paragraph 2 of the present article shall not be applied.

Article 26. Safeguard duties.

1. On the basis of an affirmative determination of the Authorized Body and decision of the Government of the Republic of Kazakhstan on introduction of safeguard duties, Customs authorities shall levy them on the total amount of imported product under investigation.
2. Safeguard duties shall be collected regardless of customs duties, taxes and other payments.

Article 27. Notification on completion of investigation and introduction of safeguard measures.

A decision on introduction of safeguard measures shall come into force from the date of its publication in the Republican press. The publication should contain data in accordance with article 21 of this Law and also the reasons for accepting or refusing the arguments or claims of Suppliers.

Article 28. Determination of the amount/size of safeguard measures.

1. Safeguard measures shall be established to the extent necessary to remedy injury caused by import of product under investigation.
2. The amount/size of safeguard measures cannot be increased way during the period of its application.
3. The amount/size of safeguard measures can be decreased by the Government of the Republic of Kazakhstan upon the application of the Authorized Body in the following cases:
 - a) if a safeguard measure has been applied for more than one year with regular intervals during the whole period of application;
 - b) if a safeguard has been applied for more than 4 years after the middle of the period of its validity; in this case the Authorized Body can consider elimination of a safeguard measure or speeding up the decrease of a safeguard measure.

Article 29. Duration of safeguard measures.

1. Duration of a safeguard measures shall not exceed 4 years from the date of its introduction. Revision the duration of a safeguard measure shall be carried out by the Authorized Body at its own initiative or upon the application submitted by domestic producers or on their behalf. The total period of application of a safeguard measure shall not exceed 8 years.
2. When Authorised shall determine that applied safeguard measures are not justified, they shall be terminated or their amount shall be changed.

Article 30. Procedure for Entry into Force of this Law.

The present Law shall enter into force in accordance with internal legislation.