

## REPUBLIC OF LITHUANIA

### Law on the Safeguard Measures No XX of X (day) X(month) 1999

#### Chapter I General Provisions

##### **Article 1. The purpose of this law**

The purpose of this law is to provide legal conditions for safeguarding Lithuanian producers from the import of products into the customs territory of the Republic of Lithuania, which impair their position.

##### **Article 2. The main definitions used in this law:**

1. **Imports causing injury** means the situation where a product is imported in such greatly increased quantities (either in absolute terms or relative to production or consumption of the like product in Lithuania) and on such terms and conditions as to cause, or threaten to cause, serious injury to the domestic producers of the like products.
2. **Like product** means a product which is identical to in all respects or has characteristics closely resembling those of the imported product under consideration or is directly competing on the Lithuanian market.
3. **Domestic producers** means the producers as a whole of the like or directly competing products or those whose collective output of the like product constitutes more than 50 percent of the total production of those products in the customs territory of the Republic of Lithuania.
4. **Serious injury** means a significant overall impairment in the position of domestic producers, resulting in the reduction of the volume of production of the like product, its return on capital, sales in the domestic market, the price of such product, labour efficiency, utilization of capacity, negative impact on the stock, employment, etc.
5. **A threat of serious injury** means serious injury that is ascertained by evidences, clearly imminent to domestic producers.
6. **Customs territory of the Republic of Lithuania** means the territory of the Republic of Lithuania, bordered by the customs boundaries of the Republic of Lithuania, unless the international agreements of the Republic of Lithuania provide otherwise.
7. **Customs boundaries of the Republic of Lithuania** means the border of the customs territory of the Republic of Lithuania, coinciding with the state border of the Republic of Lithuania, unless the international agreements of the Republic of Lithuania provide otherwise.

8. **Safeguard measures** means the measures restricting the import of products concerned into the customs territory of the Republic of Lithuania, applied by the Republic of Lithuania, by setting safeguard import quota of the product under consideration or a safeguard duty.

9. **Safeguard import quota** means the restriction of import of the product under consideration, expressed in the annual amount (expressed in kind or in value) of such product permitted to be imported. Such restriction may be applied only if upon the completion of investigation it is established that an adverse import is being carried out into the customs territory of the Republic of Lithuania.

10. **Safeguard duty** means the duty which may be imposed as a provisional measure during the investigation, when preliminary determination is made that imports are causing injury and as a final measure, when it is determined that imports are causing injury .

11. **Interested parties** for the purpose of the procedures for the determination and application of safeguard measures means:

- 1) the Lithuanian producers of the like or directly competitive products or trade or business associations, a majority of the members of which are the producers of the like or directly competitive products;
- 2) producers, exporters or importers of the product in question, or business associations, a majority of the members of which are foreign producers, exporters or importer of the product concerned;
- 3) the governments of the countries exporting the imports in question;
- 4) Lithuanian consumers, which use the imports in question for the production of their products as well as non-industrial Lithuanian consumer associations;

### **Article 3. Public authorities in charge of the implementation of this law**

1. The administration officials authorised by the Competition Council (hereinafter referred to as authorised officials) shall carry out investigation for the determination of imports causing injury and injury itself, make determinations as to the initiation of investigation, application of safeguard measures, (as appropriate) the initiation of repeat investigation, extension or abolishment of application of safeguard measures, termination of investigation, carry out the reviews of the application of safeguard measures and submit to the Competition Council their findings, publish decisions adopted by the Competition Council in the Official Gazette and provide information to the interested parties.
2. The Competition Council shall adopt decisions on the initiation of the investigation, (as appropriate) the extension of the duration of investigation, its termination; on the application of safeguard measures; on the repeat initiation of investigation, extension of the application of safeguard measures; on the speedier liberalisation of the applied measure or termination of the applied measure.

## **CHAPTER 2 INVESTIGATION**

### **Article 4. Purpose of investigation**

The purpose of investigation is to determine, on the basis of the objective evidence, whether imports of the product in question into the customs territory of the Republic of Lithuania are causing or threatening to cause serious injury to domestic producers.

### **Article 5 Initiation of investigation**

1. The investigation to determine imports causing injury shall be initiated provided the Competition Council has received a written application from the domestic producers or on their behalf, submitted in accordance with the requirements of laid down in Article 6 of this law and has adopted a relevant decision .
2. An application may be lodged by a natural or legal person or any other economic entity without a legal personality acting on behalf of domestic producers (as referred to in paragraph 3 of Article 2).
3. The investigation may be commenced on the initiative of the Competition Council without having received a application referred to in paragraph 1 of this Article, if it is in possession of sufficient evidence, such as analysis of foreign trade evidencing the imports in the customs territory of the Republic of Lithuania causing injury

### **Article 6. Application to carry out investigation**

1. An application to carry out investigation shall include evidence of the existence of the considerably increased quantities of imports, injury or threat to cause serious injury to domestic producers and a causal link between the imports and injury. The application shall contain such information (as is available to the applicant) on the following:

- 1) full name and address of the applicant ( in case of a legal person, the name and address of its head office). If the application is lodged on behalf of domestic producers, the list of Lithuanian producers on behalf of which the application is lodged and a description of the volume and value of the production of the like or directly competitive products;
  - 2) a complete description of the product so as it would be possible to classify it according the Combined Nomenclature of Common Customs Tariffs and Foreign Trade Statistics;
2. Information on changes in the volume of the imports in question and its impairing impact on domestic producers (as indicated by such factors as production, sales, productivity, utilisation of capacity, profit (loss) level, employment) and other documents must be submitted alongside with the application, substantiating the justification of investigation.

### **Article 7. Consideration of application and adoption of a decision as to the initiation of investigation**

1. Upon the receipt of application by the Competition Council, the officials authorised by it shall, not later than within 20 calendar days, :

- 1) examine whether the application has been lodged in accordance with the requirements laid down in Article 6 of this law and there is sufficient evidence to initiate investigation;
- 2) check the correctness of the supplied information;
- 3) submit to the Competition Council the proposal concerning the acceptance or refusal of the application to carry out investigation.
2. The Competition Council, having examined the information submitted by the authorised officials relative to the justification of the initiation of investigation shall, not later than within 30 calendar days from the date of the lodging of application, adopt the decision as to the initiation of investigation.
3. If the Competition Council decides to carry out investigation pursuant to paragraphs 1 and 2 of Article 20 of this law, such decision shall be published in the Official Gazette.
4. The Competition Council, having adopted the decision not to carry out investigations (in the event an application to carry out investigation has been received) shall inform the applicant of its decision within 5 working days from the adoption of such decision.

### **Article 8. Investigation**

1. In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to the domestic producers, producing the like or directly competitive product, the competent authorities shall evaluate factors of an objective nature having a bearing on the situation of that industry:
  - 1) the volume and value of the products in question, imported into the customs territory of the Republic of Lithuania and its share in the total volume of the like or directly competitive product in the Lithuanian market;
  - 2) increase in the volume of the imports in question into the customs territory of the Republic of Lithuania, either in absolute terms or relative to production and consumption in the customs territory of Lithuania;
  - 3) the price at which the product in question is imported into the customs territory of the Republic of Lithuania. Consideration should be given to the fact whether there has been a significant price undercutting by the imports as compared with the price of a like product or directly competitive product of the domestic industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred;
  - 4) changes in sales of the like or directly competitive product of Lithuanian origin in the domestic market;
  - 5) impact of imports on domestic industry, evaluating changes in indices, having bearing on the state of Lithuanian industry, including its output, utilisation of capacity, stocks, profits, return on capital, cash flows, employment;
  - 6) factors other than trends in imports which are causing or may have caused injury to domestic producers concerned.
2. When a threat of serious injury to domestic producers is imminent, in addition to factors indicated in paragraph 1 of this Article, it should be investigated whether it is evident that imports in question shall cause serious injury in foreseeable future to domestic producers. In this connection, the rate of growth of imports in question into the customs territory of the Republic of Lithuania may be evaluated as well as the present and anticipated capacity of production in the country of origin or export of the imports in question and the probability that such capacity

will be utilised for the production of the products in question, which will be exported to the customs territory of the Republic of Lithuania.

3. During the investigation all factors of objective and quantifiable nature having a bearing on the situation of domestic producers must be evaluated. When factors other than increased imports are causing injury to the domestic producers at the same time, such injury shall not be attributed to increased imports.
4. During the investigation the necessary information shall be obtained in the following manner:
  - 1) replies by interested parties to questionnaires submitted by the Competition Council . Replies to questionnaires shall be submitted within 30 days (calculated from the date of the receipt thereof);
  - 2) additional evidence submitted in writing by interested parties on their own initiative;
  - 3) data and documents submitted at the request of the Competition Council by Lithuanian economic entities, central and local authorities, statistics agencies.
5. During the investigation, interested parties must be provided with the opportunity to submit evidence and express their views on the information in questions on the information submitted by other parties to the investigation.
6. The Competition Council may hear the interested parties, provided they made a written application to the Competition Council within the time limit laid down in paragraph 2 of Article 20. This application must show that the interested party which has submitted the application is actually likely to be affected by the outcome of investigation and that there are special reasons for it to be heard orally.
7. The interested parties which have submitted a written request shall be provided with the opportunity to see all non-confidential information (within the meaning of Article 21 of this law), relevant to the investigation, on which investigation is based.
8. In the course of investigation normally information covering one year is examined. Any other period may be selected of at least six months prior to the initiation of investigation.
9. The investigation shall be based only on written information.
10. If the interested party refuses to provide necessary information, or provides it after the expiry of all time limits or it is established that the interested party has provided false information, false information shall be disregarded and findings shall be based on other reliable information received by the Competition Council from other independent sources. The interested parties shall be informed in writing that in the case of failure to submit information, delayed submission of information or submission of false information that the findings of the investigation might be less favourable than if they would have cooperated. However if the information submitted by the interested parties is not ideal but deficiencies are not such as to cause undue difficulty in using it and it is verifiable and the party acted to the best of its ability, such information shall not be disregarded.
11. If evidence or information is not accepted, the supplying party shall be informed of the reasons therefor and shall be granted the opportunities to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be given in the decisions provided for in paragraph 1 of Article 20.

### **Article 9. Duration of investigation**

1. The duration of investigation shall not exceed 9 months from the date of the entry into force of the decision to initiate investigation. Under special circumstances the Competition Council may adopt the decision to extend the time limit but for no longer than 2 months. The notice of the extension of the investigation, stating the duration and the reasons thereof shall be published in the Official Gazette in accordance with paragraph 4 of Article 20.
2. If within 9 months of the adoption of the decision to initiate investigation and on the basis of information investigated, a conclusion is made that safeguard measures are unnecessary, the Competition Council shall, within 1 month, adopt the decision to terminate the investigation. This decision shall be published in the Official Gazette in accordance with paragraph 4 of Article 20.

## **CHAPTER 3**

### **APPLICATION OF SAFEGUARD MEASURES**

#### **Article 10. Objectives of the application of safeguard measures**

The safeguard measures shall be applied for the following objectives:

- 1) to eliminate serious injury caused to domestic producers or a threat thereof;
- 2) to provide conditions to domestic producers to adjust to the increased competition and to facilitate this adjustment.

#### **Article 11. Terms and conditions for the application of safeguard duty as the provisional safeguard measure**

During the investigation, a safeguard duty may be applied as a provisional safeguard measure against the imports in question, provided all the following conditions are met:

- 1) in the course of investigation preliminary determination has been made on the basis of objective data that the imports in question causes injury to Lithuanian producers ;
- 2) due to the impaired situation of domestic producers provisional safeguard measures must be applied without delay and if during investigation safeguard duty shall not be applied it would be difficult to repair the serious injury caused to domestic producers;
- 3) The Competition Council considers that it is necessary to apply a safeguard duty during the investigation (taking into consideration the fact that conditions laid down in paragraphs 1 and 2 are met).

#### **Article 12. Application of a safeguard duty as a provisional safeguard measure**

1. The decision to apply the safeguard duty as a provisional safeguard measure shall be taken by the Competition Council. It shall set the amount of the duty and the date from which it shall be applied (so as to allow for the preparation for the application of the duty). The decision shall be published in the Official Gazette in accordance with paragraph 1 of Article 20.
2. The safeguard duty as a provisional safeguard measure may be imposed for no longer than 200 calendar days. The duration of the application of a safeguard duty

shall be included in the total duration or extension of the application of safeguard measures, set forth in Article 15 and paragraphs 1 and 5 of Article 16.

3. The safeguard duty shall be imposed regardless of other duties concurrently applied in respect of the imports in question if it is expected that it may prevent or remedy serious injury. In any case the amount of the safeguard duty shall not exceed the duty necessary for the elimination of the serious injury caused to domestic producers by the preliminary determined imports in question.
4. In cases where upon the conclusion of investigation the imports causing serious injury have not been established, the safeguard duty if had been paid shall be refunded in accordance with the procedure established by the Law on Customs Tariffs of the Republic of Lithuania.
5. If the importer of the products in question refuses to pay safeguard duty set by the Competition Council, such imports shall not be released for free circulation into the customs territory of the Republic of Lithuania.

### **Article 13. Application of safeguard measures upon the conclusion of the investigation**

1. Safeguard measures may be applied against the products imported into the customs territory of the Republic of Lithuania only if it has been determined in the course of investigation in accordance with the provisions of Article 9 of this law that such imports are causing injury to the Lithuanian domestic producers.
2. The safeguard measures shall be applied against the products in question imported into the customs territory of the Republic of Lithuania on a non-discriminatory basis, regardless from what country the product is being imported, with the exception of cases specified in paragraphs 3 and 4 of Article 14 and Article 19.
3. The Competition Council on the basis of information examined in the course of the investigation and the proposals submitted by the authorised officials, shall take the decision whether or not to apply a safeguard measure. If it is decided to apply a safeguard measure, the decision shall state:
  - 1) facts and motives on which such decision is based;
  - 2) what safeguard measure shall be applied – a safeguard duty or a safeguard import quota;
  - 3) the amount of the safeguard measure (the tariff of the safeguard measure or import quota, set in accordance with Article 14 of this Law);
  - 4) terms and conditions for the application of a safeguard measure, including the date from which it will enter into force;
  - 5) timetable for liberalisation of the a safeguard measure ( as it is provided for in paragraphs 1 and 2 of Article 17.
4. The decision of the Competition Council to apply a safeguard measure, having agreed it with the Ministry of national Economy, shall be published in the Official Gazette in accordance with the provisions of Article 20.
5. If according to the results of the investigation the Competition Council has taken the decision to apply safeguard measure as a definitive measure, provisions of paragraphs 1, 3, 4, and 5 of Article 12 shall apply.
6. The procedure for the application of a safeguard duty and administration of safeguard import quota shall be established by Government of the Republic of Lithuania or a public institution authorised by it.

#### **Article 14. The amount of the safeguard import quota**

1. If on the basis of the findings of the investigation the Competition Council has taken the decision to apply a safeguard import quota, its level shall be set, stating the amount (in terms of its quantity or value) of imports allowed to be imported into the customs territory of the Republic of Lithuania per year.
2. The level of the safeguard import quota shall not be set lower than (in terms of volume or value) the average level of imports over the last three years and not lower than is necessary for the elimination of serious injury caused to the domestic producers or a threat thereof and to provide conditions for their adjustment to the increased competition of foreign producers and facilitate this adjustment. In establishing a quota, account shall be taken of the desirability of maintaining traditional trade flows, the volume of goods exported under contracts concluded before the entry into force of a safeguard measure where such contracts have been notified to the Competition Council.
3. Taking into consideration the findings of the investigation, safeguard import quota shall be allocated among the countries exporting the product in question or their groups, allocation may be agreed with those of them having a substantial interest in exporting the product concerned into the customs territory of the Republic of Lithuania. Failing this, the quota shall be allocated among these countries or groups of countries, in proportion to their share of imports concerned over the last three years, due account being taken of the factors which may have affected or may be affecting the trade in the product.
4. The departure from the requirements laid down in paragraph 2 of this Article shall be permitted if the imports concerned from the certain country or group of countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned over the period specified in paragraph 3 of this Article (safeguard import quotas for the imports concerned from such country or a group of countries may be stricter than those set in accordance with paragraph 2 of this Article. The departure referred to above shall not be permitted in the case of threat of serious injury to the domestic producers.

#### **Article 15. Duration of a safeguard measure**

The duration of safeguard measure must be limited to the period of time necessary to achieve the objectives specified in Article 10 of this law, but not longer than for 4 years, including the duration of the safeguard duty applied during the investigation, with the exception of cases where its duration is extended pursuant to Article 16 of this law.

#### **Article 16. Extension of the safeguard measure**

1. If there is sufficient evidence that the application of a safeguard measure is necessary in order to prevent or remedy serious injury, on the initiative of the Competition Council having taken an appropriate decision a repeat investigation may be conducted in accordance with the provisions of Chapter 2 of this law. During the repeat investigation safeguard duty, as a provisional safeguard measure may not be applied.
2. If during the repeat investigation it has been established that the extension of the application of a safeguard measure is necessary in order to prevent or remedy serious injury and there is evidence that domestic producers are adjusting to the increased competition with foreign companies, on the decision of the Competition Council the application of a safeguard measure may be extended. The extension

of the duration of a safeguard measure shall be governed by the provisions regulating the application of a safeguard measure if it is in compliance with the provisions of this Article.

3. The duration of the application of a safeguard import quota, set in accordance with paragraph 4 of Article 14, may not be extended .
4. The extended safeguard measure shall not be more restrictive than it was at the end of the initial period.
5. The total period of application, including the period of application of safeguard duty during the period of investigation, the initial period of application and any prorogation thereof may not exceed 8 years.

#### **Article 17. Liberalization of a safeguard measure and surveillance of its application**

1. In order to facilitate adjustment of domestic producers, where the duration of a safeguard measure exceeds one year, the measure must be progressively liberalised at regular intervals during the period of application, including the period of extension.
2. In implementing the requirement of paragraph 1 hereof, the Competition Council shall, by its decision establishing a safeguard measure, also approve the timetable for its liberalisation. The timetable for the liberalisation of a safeguard measure must be also approved in the case of the application of a safeguard measure is extended in accordance with paragraph 2 of Article 16.
3. If the duration of a safeguard measure exceeds three years, the authorised officials shall review the necessity for application of a safeguard measure no later than the mid-term of the period of application of that measure. The review shall be initiated no later than three months preceding the end of the mid-term. Reviews shall be carried out according to the same procedure as the investigation.
4. The Competition Council having received the report of the authorised officials about the findings of the reviews, shall adopt a relevant decision. If the serious injury or a threat thereof caused by imports in question have ceased to exist, diminished or if the revocation of a safeguard measure or an accelerated pace of liberalization would facilitate the adjustment of domestic producers to the increased competition with foreign producers, the Competition Council may revoke the safeguard measure or to accelerate the pace of its liberalization by changing the timetable for the liberalization of a safeguard measure, provided for in paragraph 2 hereof.

#### **Article 18.Reimposition of a safeguard measure**

1. A safeguard measure may not be reimposed on imports in question until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than two years.
2. Notwithstanding provision of paragraph 1, a safeguard measure of 180 days or less may be reimposed for a product if the following two conditions are met:
  - 1) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product;
  - 2) such safeguard measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of the introduction of the measure.
3. The safeguard measure may be reimposed, if the investigation shall be initiated in accordance with the provisions of Chapter 2 and it has been established that the

application of a safeguard measures is necessary. The adoption of the decision to apply a safeguard measure shall be based on the provisions of Article 10, 11, 12, 13, 14, 15, 17, and 19. of this Chapter.

**Article 19. Application of a safeguard measure against imports from a developing country**

1. Safeguard measures shall not be applied against a product originating in a developing country if the following two conditions are met:
  - 1) the share of imports from such countries does not exceed 3 per cent of the total imports of such product into the customs territory of the Republic of Lithuania;
  - 2) imports of the product in question from the developing countries with less than 3 per cent import share collectively does not account for more than 9 per cent of the imports of such product into the customs territory of the Republic of Lithuania.
2. The list of countries to the imports into the customs territory of the Republic of Lithuania of which the provisions of paragraph 1 hereof shall be applied, shall be approved by the Government of the Republic of Lithuania.

## **CHAPTER 4**

### **NOTIFICATION**

**Article 20. Notification**

1. The Decision of the Competition Council to initiate investigation relative to imports causing injury as well as its decisions concerning the application, review or revocation of safeguard measures shall be published in the Official Gazette .
2. The Official Gazette in which the decision of the Competition Council to initiate investigation relative to imports causing injury is published , must also publish a notice containing the following :
  - 1) the summary of information received together with the application ;
  - 2) request to submit all information relative to the investigation to the competition Council;
  - 3) the time limit set within which the interested parties may, in accordance with paragraphs 6 and 5 of Article 8 of this law submit in writing evidence and give their opinion ;
  - 4) the time limit set for the submitting of applications to be heard orally and to submit additional information related to the investigation.
3. Alongside the decisions of the Competition Council relative to the application, review or revocation of a safeguard measure, published in the Official gazette, a notice shall be published on the evidence obtained during the investigation or review and the established facts on the basis of which the conclusions were based and decisions taken.
4. The Competition Council, having taken the decision to extend or terminate the investigation shall publish a notice to that effect in the Official Gazette, giving the main findings of the investigation and the summary of the reasons for its extension or termination .
5. At the written request of the interested parties, the Competition Council shall provide them with information on facts, reasons, and legal provisions on the basis of which relevant decisions have been taken. Information shall be submitted taking into account the confidentiality requirements.

**Article 21 Confidential information**

1. All information obtained under this law shall be used only for the purpose for which it was requested. Any information which is by nature confidential or which is provided on confidential basis by the supplier of information shall be treated as such by the authorities enforcing this law. The authorities implementing this law may not disclose such information without the consent of the supplier of such information.
2. Confidential by nature shall be any information the disclosure of which would have a significantly adverse effect upon a person supplying the information or upon the source of this information.
3. The supplier of confidential information shall be required to furnish non-confidential summaries thereof. If the supplier of the confidential information indicates that such information is not susceptible of summary, he must provide a statement of the reasons why summarization is not possible.
4. The supplier requesting to treat the information furnished by him as confidential, must indicate the reasons why his information should be treated as such. If it is considered that a request for confidentiality is not warranted and the supplier of the information is either unwilling to make the information available or to authorise its disclosure in generalized or summary form, such information may be disregarded unless its correctness may be proven by other sources.

**CHAPTER 5  
FINAL PROVISIONS****Article 22. International Agreements**

If international agreements to which the Republic of Lithuania is a party contain provisions other than those laid down in this Law, the provisions of international agreement shall apply.

I promulgate this Law passed by the Seimas of the Republic of Lithuania

President of the Republic

Valdas Adamkus