

**LAW OF UKRAINE**  
**On Amendment of the Law of Ukraine**  
**„On Protection of the National Producer against Dumped Imports”**  
**(regarding Procedures of Antidumping Investigations)**

Verkhovna Rada of Ukraine decrees:

I. To introduce the following changes to the Law of Ukraine “On Protection of the National Producer Against Dumped Imports” (Vidomosti of Verkhovna Rada of Ukraine, 1999, № 9-10, page 65; 2000, № 24, page 186; 2003, № 37, page 300):

**1.** In items 2, 5, 10, 13 of Part 1 of Article 1 replace the language “Ukraine” and “into Ukraine” with “country of import” and “to country of import”.

**2.** Supplement Article 1 with the following item:

28) Antidumping Proceeding – the procedure of reviewing and resolving antidumping cases. Antidumping proceeding consists of 2 stages – antidumping procedure and antidumping investigation. The antidumping proceeding begins at the date when in accordance with the Parts 1-3 of Article 12 of this Law an applicant submits a complaint and ends at the date when one of the following notifications is published:

about dismissal to institute antidumping investigations and termination of antidumping procedure;

about cancellation of a decision to institute antidumping investigations;

about dismissal of antidumping investigations;

about negative conclusion regarding dumping (damage) and, as a consequence, about cessation of the antidumping proceeding;

about cancellation of Commission's decision to pay antidumping duty; or

about termination of investigation suspended in accordance with Article 15 of this Law.

**3. Part 3 of Article 7 shall read:**

“3. The prices, established between the associated parties (between controlling party and party under control) or between the parties, which entered into the compensation agreement, may be treated as those, not practiced in the traditional trade operations and may be unused for determination of a normal value, provided it is not established that such prices have no effect upon mutual relations of the parties.

**4. In item 2 of Part 8 of Article 9 replace the language “actual” with “actual”** [translator's note: changes in Ukrainian text do not affect English]

**5. Part 3 of Article 10 shall read:**

„3. Regarding the volumes of dumped imports it shall be investigated, whether there was a significant growth of absolute indicators of volumes of dumped imports or with respect to the production or consumption of the relevant goods in Ukraine

Regarding the effect of dumped imports upon prices of similar goods it shall be investigated:

1) whether a substantial cutting of price by dumped imports as compared with the price of similar goods in Ukraine, took place;

2) whether such imports by any other means cause considerable decrease of prices or substantially impedes a possible increases of prices which otherwise would have occurred.

The Ministry shall consider more than one factor, stipulated in this Part, while making a corresponding decision on the issue, specified in Item 1 of Part 2 of this Article.

**6. Paragraph 2 of Part 5 of Article 10 shall read:**

The Ministry shall consider more than one factor, stipulated in this Article, while making a corresponding decision on the issue, specified in Item 2 of Part 2 of this Article.

**7. In Part 10 of Article 10 replace the language “determination” with “determination”** [translator's note: changes in Ukrainian text do not affect English]

**8. Part 11 of Article 10 shall read:**

“The Ministry shall take into account all the factors, specified in Part 10 of this Article in aggregate, while making a decision on inevitability of dumped exports into Ukraine from exporting country (exporting countries) and substantial damage, caused by these exports, unless any preventive measures are taken.”

**9. Part 9 of Article 12 shall read:**

“9. In the process of an anti-dumping procedure the Ministry shall simultaneously consider the evidence of the presence of dumping and the damage, stipulated in the complaint, and assess their sufficiency and validity for taking decision on initiation of an anti-dumping investigation or its rejection.”

If in the process of an anti-dumping procedure the Ministry establishes that the evidence of the presence of dumping, damage or cause-and-effect relation between them is not sufficient to justify the continuation of antidumping procedure, in particular that the actual or potential volumes of dumped imports are non-substantial or the margin of dumping is considered to be minimal, a complaint, submitted by an applicant in accordance with the Parts 1-3 of this Article 12 shall be rejected. The Ministry may recommend the Commission to make a corresponding decision on dismissal to institute antidumping investigations.

The margin of dumping is considered to be minimal, if its value is less than 2 % of export price.

The actual or potential volumes of dumped imports are as a rule considered to be non-substantial, if the volumes reach less than 3 % of imports of similar goods to Ukraine, provided that the volumes of imports from exporting countries, which volumes of imports are less than 3 % of imports of similar goods to Ukraine, together reach less than 7 %.

The antidumping measures shall not be applied to the imports from developing WTO member-country, provided that the actual and potential volumes of imports from this country is less than 4 % of the total volume of imports of similar goods from countries of import. But this rule shall not be applied, if the aggregate share of exporting countries, which individual shares are less than 4%, exceed 9 % of the total volumes of imports to Ukraine.

The lists of developing WTO member-countries are provided in Attachments 5 and 6 of the Law of Ukraine „On Protection of the National Producer against Subsidized Imports”

**10. Paragraph 1 of Part 10 of Article 13 shall read**

“10. The term of performing an anti-dumping investigation shall not exceed one year since the date when the decision on its initiation entered into force.”

**11.** In Paragraph 2 of Part 10 of Article 13 digits “15” shall be replaced with “18”.

**12.** Part 4 of Article 16 shall read:

“4. If in the process of an anti-dumping procedure the Ministry establishes that the evidence of the presence of dumping, damage or cause-and-effect relation between them is not sufficient to justify the continuation of antidumping procedure, in particular that the actual or potential volumes of dumped imports are non-substantial or the margin of dumping is considered to be minimal, a complaint, submitted by an applicant in accordance with the Parts 1-3 of Article 12 of this Law, the Commission, upon Ministry submission [statement], shall as a rule make a corresponding decision on dismissal to institute an antidumping investigations and termination of antidumping procedure.

If in the process of an anti-dumping investigation the Ministry establishes that the evidence of the presence of dumping, damage or cause-and-effect relation between them is not sufficient to justify the continuation of antidumping investigation, in particular that the actual or potential volumes of dumped imports are non-substantial or the margin of dumping is considered to be minimal, the Ministry shall recommend the Commission to make immediately a corresponding decision on termination of antidumping investigation without application of antidumping measures.

If in the process of an anti-dumping investigation the Ministry establishes that the value of the margin of dumping with certain exporters is less than 2 % of the export price, antidumping investigation shall be terminated by the Commission without application of antidumping measures to such exporters. Such exporters shall remain the subjects of an anti-dumping procedure and may be subject to a new anti-dumping investigation during the next revision of the anti-dumping measures that is carried out pursuant to Chapter V of this Law

**13.** Part 1 of Article 15 shall read:

„1. The Commission may make a decision to undertake an obligation on cessation of dumped imports provided that:

1) the Commission made a decision on application of provisional anti-dumping measures;

2) not later than within 60 days after the date when the Commission had made a decision, the Ministry received from exporter satisfactory voluntary written obligation to reconsider his prices or terminate exporting of goods at dumped prices, into the region of Ukraine subject to an investigation, so that to assure the Ministry and the Commission that the effect of such dumping, causing the damage, shall be liquidated;

3) the Ministry submits to the Commission the exporter's obligations together with the relevant proposals;

4) not later than within 90 days after the date of the decision mentioned in item 1 of this Article, the Commission made a decision to accept the exporter's obligations to cease the dumped imports. The increase in prices pursuant to the exporter's obligations

shall not exceed the rate, required for the elimination of the margin of dumping;

but may be less than the value of the margin of dumping, where the specified increase is sufficient for the liquidation of damage, caused to the national producer by the dumped imports.

Where the national producer determines the aggregate number of the producers of a certain region according to part one and two of Article 11 of this Law, the exporters shall be given an opportunity to offer their obligations as to importation of their products to the corresponding markets according to this Article. In such a case the regional interests shall be taken into account as well, provided the Commission establishes that application of the provisional anti-dumping measures meets the national interests

If the Commission made a decision to accept the exporter's obligations to cease the dumped imports and these obligations remain effective, provisional anti-dumping duty, imposed by the Commission in accordance with the Article 14 of this Law, or definitive antidumping duty, imposed by the Commission in accordance with the Article 16 of this Law, depending upon circumstances shall not be imposed to the imported goods manufactured by the interested party mentioned in commission's decision to accept obligations or in any following decision, provided that these obligations remain effective.

**14.** Parts 9 and 10 of Article 15 shall read:

„9. Any interested party, in particular a national producer, may submit to the Ministry information bearing evidence of violation of obligations to cease dumped imports. In this case the Ministry shall introduce monitoring of imports within the framework of the obligation and examine other relevant information. The term of monitoring and examination shall not exceed 6 months from the date of submission by interested party.

In case the Ministry identifies the facts of violation or withdrawal of obligations to cease dumped imports by any interested party or in case of withdrawal of obligation by the Commission upon Ministry submission [statement], the Commission shall as a rule make a decision to apply antidumping measures by simple majority vote. In this decision the Commission shall authorize:

1) the Ministry and the Service to issue the relevant orders to collect provisional antidumping duty, imposed by the Commission in accordance with the Article 14 of this Law and (or) definitive antidumping duty, imposed by the Commission in accordance with the Article 16 of this Law, on the grounds of violation or withdrawal of the mentioned obligation;

2) the Ministry to publish a notification on application of antidumping measures on the grounds of violation or withdrawal of the mentioned obligation in a newspaper.

The interested exporter, except for the cases of exporter's termination of obligations shall have an opportunity to submit to the Ministry his comments which may be taken into account while considering the relevant case at the Commission's meeting.

10. The provisional and (or) definitive antidumping duty may be imposed in accordance with the Article 14 and (or) Article 16 of this Law depending upon circumstances, on the grounds of available information provided by the interested party in particular by a national producer, if there are reasons to believe that the obligations are violated or in case of violation or withdrawal of obligations, when an antidumping investigation, resulted in such obligations, has not been terminated.

**15. Paragraph 1 of Part 2 of Article 17 shall read:**

“In case of introduction of the provisional anti-dumping duty and if the Ministry ultimately established the facts of dumping and damage, the Commission, on proposal of the Ministry, shall make decision to specify the rate of the provisional anti-dumping duty, regardless of the decision on application of the definitive anti-dumping duty shall be made. “

**16. Part 3 of Article 18 shall read:**

„5. The requirements of Articles 12 and 13 of this Law, with the exception of the terms determined by these Articles, shall extend to the procedure of reconsideration of antidumping measures which shall be performed in accordance with the Articles 19-22 of this Law. The reconsiderations, performed in accordance with the Articles 19-20 of this Law, shall be completed promptly and, as a rule, not later than within twelve months from the date of initiation of such reconsideration. In any case the reconsiderations performed in accordance with the Articles 19-20 of this Law shall be completed within 15 months from the date of their initiation. The reconsiderations, performed in accordance with the Article 20 of this Law, shall be completed within 9 months from the date of their initiation. If the reconsideration, performed in accordance with the Article 19 of this Law, is initiated at the same

time when the reconsideration, performed in accordance with the Article 20 of this Law, continues within the same antidumping process, the reconsiderations, performed in accordance with the Article 20 of this Law, shall be completed within the terms, established for the reconsiderations, performed in accordance with the Article 19 of this Law.

The Ministry shall submit to the Commission for consideration the proposals on measures no later than a month before the above deadlines.

Should the investigation be not completed within the limits of the above deadlines, the measures shall:

- be terminated due to the expiration of the time-period of their application in the process of investigations, conducted according to Article 19 of this Law,
- be terminated due to the expiration of the time-period of their application in case of investigations that are conducted concurrently according to Articles 19-20 of this Law, if an investigation according to Article 19 of this Law was launched while a reconsideration according to Article 20 of this Law continued within the framework of the same anti-dumping process, or if such reconsiderations were launched simultaneously, or
- remain unchanged within the framework of investigations, conducted according to Articles 20-21 of this Law.

The Ministry shall publish a notice in the newspaper on actual expiration of the time-period of the anti-dumping measures' application or keeping them in force according to this Section."

**17.** In paragraph one of Article 22 the word „cooperation” shall be replaced with the word „collaboration”.

**18.** Paragraphs one-four of Article 23 shall read:

„1. Should a national producer or any other interested party submit, as a rule, within two years upon coming into effect of the definitive anti-dumping measures, to the Ministry sufficient information that export prices were reduced compared to export prices in the primary period of investigation and before (or after) the application of the definitive anti-dumping measures, or definitive anti-dumping measures cause changes or caused insignificant changes in re-selling prices or further selling prices of imported goods in Ukraine, the Ministry upon the decision of the Commission, adopted by simple majority vote, may resume the anti-dumping investigation with the aim to determine how the anti-dumping measures effected prices.

2. Upon an anti-dumping investigation resumption according to this Article, exporters, importers and Ukrainian producers shall be provided with a possibility

to submit comments on the dynamics of re-selling prices or further selling prices. Should the Ministry determine that anti-dumping measures will cause changes in these prices, the following shall be re-computed with the aim to eliminate damage that was previously revealed in the primary investigation: export prices according to Article 8 of this Law, as well as dumping margins aimed at accounting for re-computed export prices. Should the provisions of paragraph one of this Article be considered as complied with, due to export prices decline after completion of the primary investigation and before (or after) the application of the anti-dumping measures, dumping margins may be re-computed with the aim to account for such lower export prices.

3. Should in course of the resumed investigation the Ministry reveal that the amount of dumping margin has increased, the Commission, upon the Ministry's proposal, shall, by the simple majority vote, adopt a decision on amending the previous decision on the application of the new rate of anti-dumping duty based on determination of new export prices. The proposal shall be approved by the Commission, if the latter does not make a decision, by simple majority vote, to reject it within one month upon its submittal by the Ministry. An anti-dumping duty rate, determined pursuant to this Article, may not exceed a double customs duty, determined by the Commission in its primary decision.

4. Relevant provisions of Articles 12 and 13 of this Law shall be applied in a resumed investigation that is launched according to this Article. Resumed investigation shall be completed, as a rule, no later than after six months from the date of its resumption. In any case, such re-investigations shall in all cases be completed within nine months from the date of their resumption.

One month prior to completion of resumed investigation the Ministry shall submit to the Commission for consideration the proposals on anti-dumping measures application.

Should the resumed investigation be not completed within the limits of the above deadlines, anti-dumping measures shall remain unchanged.

The Ministry shall publish a notice in the newspaper on resumption of the investigation and on the anti-dumping measures' application or keeping them in force."

**19. Paragraph one of Article 27 shall read:**

„1. In case of evasion to pay an anti-dumping duty, its payment, prescribed by this Law, may apply to imports of:

similar goods with insignificant changes or without the latter from other countries of export, which did not fall under preliminary anti-dumping measures;

similar goods with insignificant changes from the country of export, which



falls under anti-dumping measures;

or component parts from the country of export, which falls under anti-dumping measures, or from the countries of export, which did not fall under preliminary anti-dumping measures.

In case of evasion to pay an anti-dumping duty, payment of the anti-dumping duty that does not exceed residual anti-dumping duty, prescribed by paragraph six of Article 16 of this Law, may apply to import supplies of the companies, which benefit from the application of the individual rates of the anti-dumping duty with regard to imports from the countries that fall under anti-dumping measures.

Changes in the structure of trade between the third countries and Ukraine or between individual companies of the country of export, which fall under anti-dumping measures, and Ukraine, arising from practice, changes in the operations, agreements, processing or works, which are not sufficiently reasonable or are not economically justified, except for the anti-dumping duty application under condition of proof of damage or violation of the anti-dumping measures by prices and/or amount of similar goods, and proof, if necessary according to the provisions of Articles 7-9 of this Law, of dumping related to normal costs, preliminarily determined for similar goods, shall mean evasion to pay an anti-dumping duty.

The above practice, operations, processing or works shall include, in particular:

- 1) insignificant changes to goods, which are an object of consideration, aimed at fitting the later under the customs codes of goods, which, as a rule, do not fall under anti-dumping measures, since these changes do not change substantial characteristics of goods that are an object of consideration;
- 2) sending goods to Ukraine, that fall under anti-dumping measures, via the third countries;
- 3) re-organization by exporters or foreign producers of their structures of sale and channels of sale in the country of export, which falls under anti-dumping measures, with the ultimate goal to export goods to Ukraine through the mediation of foreign producers, which benefit from the application of the individual rates of the anti-dumping duty that are lower than an anti-dumping duty rate, prescribed for the goods of foreign producers from the country of export, which falls under anti-dumping measures; and
- 4) operations of assembling certain goods from component parts in Ukraine or other country.”

**20.** Paragraphs three and four of Article 27 shall read:

„3. Should an interested person (an applicant in the anti-dumping investigation or an executive power body in Ukraine) believe that there is a fact of evasion to pay an anti-dumping duty, this person shall submit to the Ministry a complaint,

which shall contain sufficient proof of available facts, specified in paragraphs one and (or) two of this Article.

Based on the complaint, submitted according to part one of this paragraph, on the grounds of the relevant decision of the Commission, the Ministry shall conduct an anti-dumping investigation of the facts of evasion to pay an anti-dumping duty. In this decision the Commission shall entrust the Ministry to introduce:

mandatory registration, specified in paragraph four of Article 28 of this Law, of contracts, pursuant to which imports are supplied to Ukraine; or

relevant deposit amount by a supplier. Funds maybe deposited at the location of customs authorities, carrying out customs clearance of goods that are an aobject of the above anti-dumping investigation. Procedure for depositing such funds shall be prescribed by the Service.

For purposes of investigation of the facts of evasion to pay an anti-dumping duty the following shall be applied: relevant provisions on launching and conducting anti-dumping investigations, specified by this Law, except for those with regard to the time-periods. The above investigation shall be conducted by the Ministry with participation of the Service within the time-period of up to nine months.

The Ministry shall submit to the Commission for consideration the proposals on measures no later than a month prior to expiration of the above deadline.

Should the Ministry reveal the facts that indicate evasion to pay an anti-dumping duty, the Commission, upon proposal of the Ministry, shall, by simple majority vote, adopt a decision on the application of anti-dumping duties to imports into Ukraine of similar goods or component parts.

Application of anti-dumping measures shall come into force from the date, as of which registration was introduced pursuant to paragraph four of Article 28 of this Law, or as of which the supplier was obliged to deposit relevant amount of funds.

4. Imports shall not be subject to registration pursuant to paragraph four of Article 28 of this Law or will not be an object of anti-dumping measures, if sold by foreign producers, which benefit from tax exemptions. Requests for tax exemptions that are adequately justified with proof shall be submitted within the time-periods, prescribed by the Commission in its decision on launching the investigation.

If practice, operations, agreements, processing or works that constitute an evasion to pay an anti-dumping duty occur outside Ukraine, tax exemptions may be granted by the Ministry to foreign producers of goods that are an object of consideration, which are able to prove that they are not related to any foreign producers that fall under anti-dumping measures. If practice, operations, processing or works that constitute an evasion to pay an anti-dumping duty occur in Ukraine, exemptions

may be provided by the Ministry after consultations with the Service to importers, which may prove that they are not related to foreign producers, which fall under anti-dumping measures. In such cases the Ministry shall adopt a preliminary conclusion that such foreign producers or importers do not practice evasion to pay an anti-dumping duty pursuant to paragraph one and (or) two of this Article.

Under conditions, specified in Article 21 of this Law, exemptions may be also granted in the process of re-consideration of anti-dumping measures to determine individual amounts of dumping margins for new exporters or producers.

Should the number of parties that request or may request tax exemptions be significant, the Commission, upon the Ministry's proposal, may, if only, at least, one year passed from the date of adopting its decision on application of anti-dumping measures, adopt a decision on launching an intermediate re-consideration of this application. Any re-consideration shall be conducted pursuant to Section V of this Law.”;

**21.** In paragraph three of Article 28 after language „may be” add language „upon the Ministry's proposal”. Language „temporarily changed with the aim to”, „producer, considered”, „unjustified” shall be replaced, accordingly, with the language „in the market of Ukraine temporarily changed with the aim to”, „by the producer to the Ministry, were taken into accounti”, „unreasonable.”

**22.** Article 28 shall be added with paragraph seven that shall read:

„7. Without violating paragraph six of this Article, the Commission may request executive power bodies in Ukraine, in each individual case to supply information that is necessary according to this Article for effective control over the application of the anti-dumping measures and control over the activities of importers, sellers and Ukrainian producers. In this case provisions of paragraphs four and five of Article 13 shall apply. Any data submitted by member-states according to this Article shall fall under the provisions of paragraph six of Article 32.”

**23.** In paragraph three of Article 30 language „decision on” shall be replaced with language „decision with regard to”. (*Translator's note: changes in Ukrainian language do not necessarily require changes in English in this case*)

**24.** Paragraph six of Article 32 shall read:

„6. Information received according to this Law shall be only used for purposes that require its submittal. This provision shall not exclude usage of information that is received in the process of one anti-dumping investigation for purposes of launching other anti-dumping investigations within the framework of the same anti-dumping proceeding with regard to goods that is an object of consideration.”

**II.** This Law shall come into effect after 30 days of its publication.

Part five of paragraph nine of this Law shall be applied from the date of Ukraine WTO accession.

**Chairman of the Verkhovna Rada of Ukraine  
V.Litvin**