

## LAW OF UKRAINE

### ON SPECIAL MEASURES IN REGARD TO IMPORTS IN UKRAINE

( Changed and amended according to Law of Ukraine

#1595-III of March 23, 2000;

#663-IV (663-15) of April 03, 2003;

#860-IV (860-15) of May 22, 2003 )

( Throughout the text hereof, the words "Ministry of Economy of Ukraine" in all cases have been replaced with the words "central economic policy executive agency" according to Law of Ukraine #860-IV (8601-15) of May 22, 2003 )

In order to introduce mechanisms protecting the interests of national producers, this Law regulates the principles and procedures of special investigation into increased imports from other countries, customs unions or economic groups causing extensive damage or threatening extensive damage, which findings may warrant special measures.

#### Chapter I. General Provisions

##### Article 1.

##### DEFINITIONS

- (1) directly competitive commodity: commodity being directly competitive with regard to the commodity subject to special investigation;
  - (2) exporter: business entity exporting goods (services);<sup>1</sup>
  - (3) threat of extensive damage: imminent danger of extensive damage to a national producer;
  - (4) interested party: any person notifying the central economic policy executive agency (hereinafter referred to as the Ministry) of his/their being interested in participating in a special investigation, as per Section 2, Article 9 hereunder, and who takes an active part in such special investigation by supplying evidence or other information in writing sufficient for the purpose of this investigation. The following persons may act as interested parties:
    - foreign producer, exporter or importer of goods subject to this investigation, or a group (association) where the majority is composed of foreign producers, exporters or importers of goods subject to such special investigation;
    - competent authorities in countries exporting goods subject to such special investigation;
    - national supplier, producer or wholesaler specialising in similar goods in Ukraine;
    - group (association) where the majority is composed of producers or wholesalers specialising in similar goods in Ukraine;
    - labour union at an enterprise manufacturing or selling wholesale similar goods in Ukraine;
    - executive authorities of Ukraine acting within their respective competence;
- ( Item 4 changed and amended according to Laws of Ukraine #1595-III of March 23, 2000; #663-IV (663-15) of April 03, 2003 )
- (5) extensive damage: worsening production, trade or financial condition of a given national producer, resulting in a considerable decline in the manufacture of a certain commodity;
  - (6) import: bringing goods across the customs border of a given country meant for consumption in that importing country;
  - (7) importer: business entity declaring goods delivered to the customs territory of Ukraine;
  - (8) competent authorities: bodies of state power of the exporting country or country of origin (customs union or economic group) securing that country's foreign or foreign economic policy, acting within their respective competence;
  - (9) exporting country: country from which certain goods originate and are imported to Ukraine. A country acting as an intermediary (also a customs union or economic group) may also be qualified as an exporting country, except in cases when the goods in question are transited via that country, are not manufactured in that country or when there are no comparable prices for such goods in that country;
  - (10) country of origin: country (customs union or economic group) in which the goods in question are manufactured or subjected to sufficient processing or treatment;
  - (11) national producer: aggregate manufacturers of similar or directly competitive goods or of some of them whose gross output constitutes the bulk of production of these goods in Ukraine;
  - (12) period of inquest: period preceding special investigation;

<sup>1</sup> In the Ukr. text: 1010 subject of economic-legal relationships taking a commodity (goods) away from the exporting country10 — Transl.

- (13) similar goods: goods that are in all respects similar to the ones subject to special investigation, or in the absence of such goods, other goods that are not similar in terms of all properties but which have characteristics similar to those of the goods subjected to special investigation;
- (14) sale: assignment of the title to certain goods to a different person or transfer of such goods to be enjoyed or possessed by another person — e.g., such assignment/transfer as per sale, lease or other civil law agreements, or when one obligation is replaced by another, or when altering the terms and conditions of such obligations;
- (15) special investigation: investigation into cases of growing imports in Ukraine, causing or threatening extensive damage to the national producer specialising in similar or directly competitive goods;
- (16) commodity [goods]: any product(s) meant for sale.

## Article 2.

### **SCOPE**

1. This Law shall apply to imports in terms of any goods brought to Ukraine from other countries, customs unions or economic groups.

2. This Law shall not exclude the application of other measures alongside special measures, namely:

- those envisaged by elements of law, international treaties signed by Ukraine and ratified by the Supreme Council of Ukraine;
- those stipulated by the General Agreement on Tariffs and Trade and World Trade organisation (hereinafter referred to as GATT and WTO).

## Article 3.

### **LANGUAGE OF INVESTIGATION**

1. Investigative proceedings under this Law shall be conducted in the official language of Ukraine.

2. Information, evidence in writing, and other documents submitted to the Ministry, State Customs Service (hereinafter referred to as the Service) or Interdepartmental Commission for Foreign Trade (hereinafter referred to as the Commission) under this Law shall be taken into account in the course of investigation if executed in the official language of Ukraine.

## Article 4.

### **TIME-LIMITS**

1. This Law determines the time-limits within which all actions stipulated hereunder are to be performed ; the said time-limits may also be determined by the Commission or Ministry. As these time-limits expire, so shall the right to perform any such actions. Documents submitted past the date of expiry shall be disregarded. The Commission or Ministry may determine to extend or renew any such time-limits in the presence of sufficient evidence [on sufficient grounds].

2. Time-limits established hereunder or determined by the Ministry or Commission shall be in terms of years, months, and days.

A time-limit may also be determined by referring to an imminent event.

3. Each such time-limit in terms of years shall expire on the stated month and date of the stated year.

Each such time-limit in terms of months shall expire on the stated date of the last month of the stated period. If the expiry date of a period in terms of month falls on the month without the stated date, the expiry date shall be the last day of that month.

If a time-limit is in terms of days it shall start on the day following the date commencing this period.

If a time-limit is determined by referring to an imminent event, it shall commence on the day following the stated occurrence.

If a time-limit expires on a day-off, the date ending this term shall be the first working day.

The date of expiry of a time-limit shall end at the time of closing business at the Ministry, Service or Commission.

The expiry date shall not be considered exceeded if prior to its end the [required] documents are submitted to the Ministry, Service or Commission and registered in keeping with set procedures.

## **CHAPTER II. STATEMENT, NOTIFICATION OF GROWING IMPORTS IN UKRAINE CAUSING OR THREATENING EXTENSIVE DAMAGE TO THE NATIONAL Producer, and Sitzings of the Commission**

### Article 5.

#### **Notification of Growing Imports in Ukraine Causing or Threatening Extensive Damage to the National Producer**

1. In case growing import trends in Ukraine are likely to warrant special measures stipulated by this Law, the Service or relevant executive authorities of Ukraine shall notify the Ministry. The latter may collect such data on its own initiative.

2. Information forwarded to the Ministry as per Section 1 of this Article 5 shall contain substantial evidence of the factors listed in Clauses (1) and (2), Section 2, Article 13 hereunder.

3. Information received by the Ministry as per Section 1 of this Article 5 and/or copies of the statement specified in Article 6 hereunder shall be submitted to the Cabinet of Ministers of Ukraine and members of the Commission within five days from the date of receipt of this information and/or statement.

#### Article 6.

##### **STATEMENT**

A national producer may submit a statement to the Ministry, requesting measures stipulated hereunder. The said statement shall contain substantial evidence of the factors envisaged by Clauses (1) and (2), Section 2, Article 13 hereunder.

#### Article 7.

##### **Jurisdiction of the Commission for Protection of National Producers Against Growing Imports**

1. The procedures of formation and operation of this Commission shall be governed by the Law of Ukraine “On Protection of the National Producer against Dumping Imports” (330-14).

The first sitting of the Commission shall be held not later than the tenth day from the date on which the Ministry received information indicated in Article 5 hereinbefore and/or copy of the statement indicated in Article 6 hereinabove.

The following sittings of the Commission, including those in the course of special investigations and over a period of applying special measures, shall be held perforce, allowing for the time-limits established by this Law.

2. Among the topics discussed by such sittings shall be:

- imports and their growth, methods establishing such growing trends, goods at issue, and methods of anticipating extensive damage, its amount, threat of such extensive damage to the national producer specialising in similar or directly competitive goods, causal connection between imports and extensive damage or threat of such damage to a national producer specialising in similar or directly competitive goods;
- terms and conditions of imports in Ukraine, import-growing trends, and various aspects of the economic and trade situation with regard to such imports;
- application of measures envisaged by this Law, in conjunction with newly discovered circumstances;
- other issues in the course of implementation of this Law.

In case of necessity the Commission's decisions on any of the above-mentioned issues may be made in working order, with Commission members signing<sup>2</sup> a relevant draft decision, unless otherwise provided by this Law. In such cases the Commission Chairman or his Deputy shall notify the membership and suggest that they commit their opinions to paper within a time-limit he establishes, over which period their opinion can be taken into account. This period, as a rule, shall not be less than five and more than ten days.

### **CHAPTER III. COMMENCEMENT AND HOLDING of Special Investigation**

#### Article 8.

##### **GENERAL PROVISIONS ON SPECIAL INVESTIGATION**

1. Special investigation shall be carried out in order to determine, proceeding from evidence indicated in Article 13 hereunder, whether imports in Ukraine cause or threaten extensive damage to the national producer.

2. The said investigation, as a rule, shall last between six months and a year. In certain cases this period may surpass one year.

Information not relating to the period of investigation shall, as a rule, be disregarded.

The dates starting and ending the period of investigation shall be determined by the Ministry.

3. The period of special investigation shall not exceed 270 days from the date of commencement thereof. In extraordinary circumstances this period may be prolonged by the Commission to 300 days, in which case the Ministry shall publish an appropriate ad in the Cabinet's periodical (hereinafter referred to as the newspaper).

#### Article 9.

##### **SPECIAL INVESTIGATION**

1. The Commission shall consider:

- statement and/or information submitted by the Ministry as per Section 3, Article 5 hereinbefore;

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<sup>2</sup> The term used in the Ukr. text can also be interpreted as *ю countersignю, ю endorse, ю put an official stampю, and ю visую* (i.e., issue a visa) — Transl.

- evidence contained in the statement or any such unbiased information as may be available to the Commission, concerning import growth in Ukraine and extensive damage or threat of extensive damage to the national producer as a result of such imports.

If in the course of such consideration the Commission determines that there is enough evidence of such growing imports in Ukraine and that this may cause or threatens extensive damage to the national producer, the Commission shall decide on the commencement of a special investigation and shall instruct the Ministry to carry it out and announce the commencement in the newspaper. The Commission shall pass this decision by a simple majority of votes.

If the Commission determines that the evidence does not suffice to warrant such investigation, it shall pass a decision on its inexpedience and instruct the Ministry to notify the Service and relevant executive authority or the national producer. This decision shall be passed by two-thirds of the votes (special majority).

A decision on the commencement or inexpedience of a special investigation shall be made by the Commission within 30 days from the date on which the Ministry received the statement or information as per Articles 5 and 6 hereinbefore.

2. The Ministry shall commence investigation and shall, within five days from the date of the Commission's decision as per Section 1 of this Article 9, have an appropriate ad carried by the newspaper. This ad shall contain:

- (1) information on the commencement of a special investigation;
- (2) information on the goods whose imports are subject to special investigation;
- (3) list of interested countries of origin and/or exporting countries;
- (4) summary (hereinafter referred to as resume) of information warranting special investigation;
- (5) invitation to contribute useful relevant information to the Ministry;<sup>3</sup>
- (6) time-limits within which the interested parties may:
  - submit commentaries in writing and other required information, including evidence in their favour;
  - request hearings at the Ministry as per Section 4 of this Article 9;
- (7) address of the Ministry to which all correspondence is to be forwarded.

3. The Ministry shall have the right to request and receive from the Service and other executive authorities in Ukraine, as well as from the interested parties all such information as may be required for the special investigation. This clause shall be binding on the executive authorities and interested parties, whereby any such request is to be complied with over a period established by the Ministry.

In order to determine the sufficiency of evidence contained in information received by the Ministry, Service or other executive authorities in the course of such special investigation, the Ministry shall verify this information.

4. The Interested parties shall have the right to address the Ministry in writing, within the time-limits stated in the ad about the special investigation, requesting Ministry hearings regarding certain aspects of the investigation and their participation in these hearings, namely:

- (1) in case they can prove that this special investigation affects their interests and its results may influence their business;
- (2) in the presence of special reasons for such hearings.

5. The interested parties present at such hearings may submit additional information to the Ministry over the period of these hearings. Oral information provided by the interested parties during such hearings shall be taken into account by the Ministry in the course of special investigation provided this information is executed in writing not later than the fifth day from the date of completing these hearings.

6. The interested parties may, after submitting a written inquiry, familiarise themselves with all information supplied by any of the other interested parties, barring ministerial documents and those of the Service and Commission provided this information:

- (1) affects their interests and can be used to defend them;<sup>4</sup>
- (2) is not confidential as per Article 12 hereunder;
- (3) is used in the course of special investigation.

The interested parties may submit commentaries on such information and the Minister shall bear them in mind provided they are sufficiently relevant and material and supplied within set time-limits.

Information and evidence submitted to the Ministry by either of the interested parties in the course of special investigation shall be forwarded by this party to all the other interested parties. If such information and evidence are not submitted to the Ministry or the other interested parties, or if such information and evidence cannot be verified, this information and evidence shall be disregarded by the Ministry in the course of special investigation.

7. If the Ministry establishes that either of the interested parties has submitted insufficient or erroneous information, the Ministry shall disregard this information and may rely on the factual data available.

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<sup>3</sup> In the Ukr. text: information to the effect that information useful to the special investigation may be handed over to the Ministry — Transl.

<sup>4</sup> In the Ukr. text: relates to the defence of their interests — Transl.

If information requested by the Ministry is not supplied within the time-limit determined by this Law or by the Ministry in keeping with this Law, or if there emerge serious obstacles in carrying out a special investigation, the Ministry shall rely in its findings on the factual data available. The Ministry shall submit the said findings to the Commission.

8. The Commission, proceeding from the Ministry's findings, may determine to terminate the special investigation. This decision shall be passed by a special majority of votes not later than 30 days from the date of submission of the Ministry's findings as per Section 7 of this Article 9, and shall be based on insufficient evidence provided for the commencement of this investigation. By such decision the Commission shall instruct the Ministry to:

- (1) prepare a report on the special investigation;
- (2) notify the Cabinet of Ministers of Ukraine, Service, and the interested parties of the termination of the official investigation;
- (3) have an appropriate ad carried by the newspaper.

9. In the course of a special investigation the Commission may determine to apply special preliminary measures and/or supervisory measures as per Article 11 and Chapter IV of this Law.

#### Article 10.

##### **DECISION-MAKING PROCEDURES re Special Measures**

1. To complete a special investigation, the Ministry shall submit an investigation progress report to the Commission.

2. When considering this report at its sitting, the Commission may determine to apply special measures as per Chapter V hereunder.

3. The Commission shall decide on special measures after studying the evidence of import growth in Ukraine and establishing:

- presence of extensive damage or its threat;
- causal connection between imports and extensive damage or its threat with regard to the national producer specialising in similar or directly competitive goods. To this end, factor(s) other than imports may be taken into account as causing or threatening extensive damage;
- conformity of special measures to the national interests.

#### Article 11.

##### **APPLICATION OF SPECIAL PRELIMINARY MEASURES**

1. The Commission, by a simple majority of votes and not earlier than 45 days from the date of commencement of special investigation, determine to apply special preliminary measures provided:

- (1) the Commission determines to commence an investigation as per Articles 8 and 9 hereinbefore;
- (2) the newspaper carries an ad notifying of the investigation;
- (3) the interested parties were given an opportunity to submit commentaries and other required information to the Ministry;
- (4) the Ministry has established that delaying special preliminary measures is causing or may cause extensive damage to the national producer;
- (5) the Ministry has established that the factual data currently available contains sufficient proof that import growth in Ukraine has caused or threatens extensive damage;
- (6) the Ministry arrives at the conclusion that the Commission must take special preliminary measures.

The Ministry shall publish an ad in the newspaper, notifying of this decision.

2. The term of application of special preliminary measures shall not exceed 200 days and nor shall it be longer than that of special investigation.

3. In the context of this Law special preliminary measures shall be administered by levying a special customs duty.

The Commission's decision on special preliminary measures shall specify the special customs duty rate payable by importers in Ukraine. The said duty shall be paid regardless of other taxes and duties (compulsory payments), including customs duties, etc., that are, as a rule, levied on imports in Ukraine.

The special customs duty shall be paid in cash or by clearing transactions or by transferring the required amount to the deposit account or by executing an appropriate debt commitment [borrower's note], unless otherwise provided by the laws of Ukraine. Such money may be entered on the deposit account at the place of the customs authority clearing the goods now subject to special investigation. Deposit transfer procedures shall be determined by the Service.

At the end of the term of special temporary measures the Ministry shall submit a progress report and findings to the Commission.

4. Special preliminary measures with regard to imports in Ukraine shall be cancelled in case:

- (1) it is determined, as per Section 5 of this Article 11, that imports of the goods at issue have caused no extensive damage or pose no threat thereof with regard to the national producer;
- (2) it is determined that special measures be taken as per Chapter V of this Law.

Special preliminary measures shall be terminated as of the date of enactment of any of the Commission's decisions indicated in this Section.

5. In case the Commission determines that there is no extensive damage or threat thereof with regard to the national producer, the Commission shall at its sitting decide on:

- (1) cancellation of special preliminary measures.

This decision shall stipulate cancellation of the special customs duty.

- (2) continuation of special investigation on the part of the Ministry.

The Commission shall pass this decision at its sitting by a special majority of votes.

The Ministry shall have an appropriate ad carried by the newspaper.

6. Decisions made by the Commission as per Section 5 of this Article 11 may envisage refunding special customs duty payments to importers.

An importer shall submit a statement to the Service, requesting such refunding within 30 days from the date of the Commission's decision made as per Section 5 of this Article 11. The statement shall specify the customs authorities clearing the goods subject to the special customs duty. Enclosed with the statement shall be documents attesting to the importation of the said goods and their being cleared through customs while special preliminary measures were in effect, as of the date on which the special customs duty was paid pursuant to the Commission's decision made in keeping with Section 5 of this Article 11.

Such a statement requesting refunding of the special customs duty shall be considered properly executed provided it contains precise information on such special customs duty payments and is accompanied by all customs documents attesting to such payments. Statements lacking such information shall be considered and returned to the applicant, along with a motivated explanation.

The Service shall forward the original statement, along with the enclosure, to the Ministry of Finance of Ukraine forthwith. Copies there shall be handed over to the Commission and Ministry.

Such special customs duty payments shall be refunded by the Ministry of Finance of Ukraine within 90 days from the date of the appropriate decision made by the Commission. If the importer at issue fails to execute the documents required for such refunding within the time-limits indicated in this Section of this Article 11, no refunding will be effected.

#### Article 12.

##### **Confidentiality**

1. Confidential information (i.e., information which, if disclosed, will place rival entities at a considerable advantage or will subsequently have a considerably negative effect on the person conveying this information or the one receiving it) and that provided by the interested parties on a confidential basis, in the course of special investigation, shall be held by the Ministry as classified provided the parties produce sufficient evidence of this information being of such confidential nature.

2. The interested parties conveying such confidential information to the Ministry or Commission shall enclose confidential resumes.

3. The Ministry, Commission or officials thereof shall be forbidden to disclose such confidential information. And nor shall any of the documents exchanged by the Ministry and Commission and records of or information pertaining to Commission sittings or ministerial documents and those of the Commission be disclosed, except in cases envisaged by this Law.

4. Information received under this Law shall be used only for the purposes of this Law.

5. This proviso shall be without prejudice to the Ministry or Commission disclosing general information or evidence relying on which the Ministry or Commission makes a given decision.

6. Persons guilty of disclosing confidential information received under this Law shall be made answerable in keeping with the laws currently in effect in Ukraine.

7. The right to access information qualified as confidential under this Law shall be vested in citizens of Ukraine as legal consultants or lawyers by either of the interested parties or Ministry in the course of special investigation, provided these persons act on behalf of the interested party.

The Ministry shall keep records of physical persons authorised to access confidential information and shall deny access if such persons are found to have disclosed information regarded as confidential under this law.

#### Article 13.

##### **Determination of Extensive Damage or Threat thereof**

1. In the course of special investigation the Ministry shall study:

- (1) the trends of the import into Ukraine, which is under investigation, for instance, the increase in the volume of the import and/or conditions of effecting such import; ( *Item (1) in the wording of Law of Ukraine #663-IV (663-15) of April 03, 2003* )
- (2) fact(s) of extensive damage resulting from such imports and/or a threat thereof with regard to the national producer;
- (3) causal connection between growing imports and/or factors causing it, and extensive damage and/or a threat thereof.

2. In the course of such investigation the following facts shall be studied:

- (1) imports in Ukraine with regard to certain goods, provided they register considerable growth in the course of investigation, in terms of ratio or absolute value compared to similar or directly compatible goods being produced or consumed in Ukraine;
- (2) relevant import costs in Ukraine, provided they show considerable decline in the course of special investigation, compared to similar domestic costs;
- (3) consequences of factors indicated in Clauses (1) and/or (2) hereinabove with regard to the national producer. The said consequences are to be determined proceeding from certain economic factors tending to change (e.g., national output of goods subject to such special investigation; use of production capacities; available stock of such goods; sales; national producer's interest in the Ukrainian market; costs of such goods — i.e., lowering costs or obstructing an increase in the costs that have been established as a rule; national producer's revenues; investment capital dividends; liquidity and employment rate at the national producer's enterprises, etc.);
- (4) other aspects pertaining to such investigation.

3. If a threat of extensive damage is alleged to be present, the Ministry shall, as a rule, study the probability of such damage as resulting from a specific situation. To this end, the following factors shall also be taken into consideration:

- (1) export growth rate in Ukraine with regard to the goods subject to such special investigation;
- (2) export potential of the country of origin or exporting country that has taken shape or is likely to take shape, as well as the probability of this potential being used to export such goods to Ukraine;
- (3) import trends affecting the national producer.

#### **CHAPTER IV. SUPERVISORY MEASURES RE IMPORTS IN UKRAINE**

##### **Article 14.**

##### **Procedures of Application of Supervisory Measures re Imports in Ukraine**

1. If in the course of special investigation the Ministry establishes a threat of extensive damage, the Commission shall, in the course of this investigation and as submitted by the Ministry, determine to apply supervisory measures envisaged by Article 15 hereunder. The said decision shall be passed by the Commission by a simple majority of votes.

2. The Service and a relevant executive authority or national producer shall submit to the Ministry information on import growth trends in Ukraine with regard to goods originating from another country, customs union or economic group threatening extensive damage to the national producer. Relying on this information, the Ministry shall prepare findings on this threat and shall submit this document to the Commission.

3. If so requested by a member of the Commission or on the Ministry's initiative, the Commission shall hold a sitting, within a time-limit provided by this Law but not later than the tenth working day from the date of receipt of this information at the Ministry, as per Section 2 of this Article 14, and prior to the date of applying supervisory measures. This sitting of the Commission shall consider this information and make an appropriate decision.

4. Depending on the results of such consideration as is stipulated in Section 3 of this Article 14, and allowing for the national interests, the Commission shall pass a decision on the application of supervisory measures or such measures providing for regional supervision by a simple majority of votes.

5. If the Commission determines that instituting such import supervisory measures all over Ukraine is inexpedient, it may decide on regional supervisory measures, binding on one or several regions of Ukraine.

6. The Commission shall instruct the Ministry to notify the Cabinet of Ministers of Ukraine, Service or a relevant executive authority of its decision and have an appropriate ad carried by the newspaper.

7. Supervisory measures shall be applied for a certain term ending not later than a year from the date of imposition, unless otherwise stipulated by the Commission's decision.

8. In the event of imposing such supervisory or regional supervisory measures, the Service shall, before the 10th day of each month file a report with the Commission and Ministry, concerning the gross cost of the goods, computed in accordance with the basic CIF-Ukrainian border delivery terms and the amount of goods as per import permits issued by the Ministry and confirmed by the Service during the previous period.

Basic delivery terms shall be determined in accordance with INCOTERMS, in the wording effective on the date of importation in Ukraine.

If the goods at issue have specific consumer characteristics or if a specific situation develops on the Ukrainian market, information indicated in Paragraph 1 of this Section 8 may be supplied within different time-limits determined by the Commission as submitted by the Ministry.

The said information shall specify the goods and the country of origin. Other information may also be provided if so resolved by the Commission.

#### Article 15.

#### **Supervisory and Regional Supervisory Measures re Imports in Ukraine**

1. Goods subjected to supervisory or regional supervisory measures shall be allowed entry in Ukraine if the importer can produce a permit issued by the Ministry, using set form, within seven working days from the date of receipt of the interested importer's application using the Ministry-approved form.

2. The application mentioned in Section 1 of this Article 15 shall, among other things, specify:

- the applicant's name and address (name in full in the case of a physical person);
- ID code (number);
- name in full and address of the shipper (carrier);
- name in full and address of the declarant;
- term of validity of the import permit;
- country of origin;
- exporting country;
- customs station, date of entry, means of transportation;
- reference to the Commission's decision imposing supervisory or special measures;
- detailed description of the imported goods;
- marking and numbers of commodities, packaging, quantity of packages, their numbers, and space occupied by the shipment;
- list of goods as per Harmonised Commodity Description and Coding System;
- gross weight (kg);
- net weight (kg);
- additional units of measurement;
- cost as per CIF-Ukrainian border basic terms (in terms of USD or ECU/euro);
- additional particulars/essentials of shipping documents;
- basic delivery terms as per INCOTERMS.

3. Each import permit shall indicate the cost and amount of goods to be imported, and the fact that these goods are subject to supervisory or regional supervisory measures, as well as other conditions, along with information on such importation as per data stated in the interested importer's application.

Each such import permit shall be valid throughout the territory of Ukraine for 90 days from the date of issue.

4. Importation of goods subject to supervisory or regional supervisory measures shall be allowed only if the customs authorities can be satisfied that:

- (1) the cost of goods at which a given transaction is carried out surpasses that stated in the import permit by over 5%, or that the total amount of goods does not exceed the cost or amount stated in the import permit by more than 5%;
- (2) goods being imported and the terms and conditions of such importation tally with other information contained in the import permit.

5. The Commission's decision to impose supervisory measures with regard to imports in Ukraine may instruct the interested importer to produce a certificate of origin when being cleared through customs and if the goods are subject to supervisory or regional supervisory measures. This, however, shall not exclude other legal requirements to such certificate being submitted to the customs authorities of Ukraine.

### **CHAPTER V. SPECIAL MEASURES**

#### Article 16.

#### **Application of Special Measures**

1. If import growth in Ukraine registers an amount or takes place over a period and/or under circumstances that cause or threaten extensive damage, the Commission, in order to protect the national interests, may determine to apply the following special measures:

- (1) restricting the term of validity of import permits issued by the Ministry as per Article 15 hereinabove;
- (2) imposition of import quotas in Ukraine, with regard to goods subject to special investigation, determining the amount of these quotas and allocation procedures;



(3) the institution of the special duty for the import into Ukraine, which is the object of the special investigation. ( *Item (3) added to the Article according to Law of Ukraine #663-IV (663-15) of April 03, 2003* )

2. The special duty instituted by the Commission shall be paid by the importer of commodities into Ukraine regardless of other taxes and duties (statutory fees) levied upon imports into Ukraine.

The rate of the special duty shall be determined as a percentage of the customs value of the commodity being under the special investigation. The customs value of such commodity shall be calculated according to the CIF Ukrainian border delivery basis. The special duty shall be levied in an appropriate amount and in each particular case separately on a non-discriminatory basis regardless of the exporting country.

The special duty shall be paid in cash or on a cashless basis, or by depositing the duty amount, or by issuing an appropriate debenture, unless otherwise provided by the legislation of Ukraine. The funds may be deposited in the location of the customs agencies, which perform the customs clearance of the commodity being under the relevant special investigation. The Service shall specify the procedure of making the said payments.

At the end of the special measures period, the Ministry shall submit a report and opinion on its results to the Commission. ( *Section 2 in the wording of Law of Ukraine #663-IV (663-15) of April 3, 2003* )

3. The Commission's decision on special measures shall contain information on:

- completion of special investigation and its results;
- special measures to be applied, name and code of the goods as per Harmonised Commodity Description and Coding System, name of the exporting country, term of the import permit, quotas and/or the special duty rate, term of special measures, date of commencement, date of enactment of the Commission's decision, other information, and rules of application of special measures. ( *The Paragraph changed and amended according to Law of Ukraine #663-IV (663-15) of April 3, 2003* )

4. Imposing quotas on imported goods subject to special measures shall be executed by way of special licenses issued by the Ministry.

5. In imposing such quotas the Commission shall bear in mind supporting traditional commodity flows and/or volumes of sales under contracts made for imports in Ukraine, of which the Commission was notified by the Ministry and Service.

6. Quota ceiling shall not exceed the arithmetic mean of imports in Ukraine over the past three years, currently subject to special investigation.

7. If a said quota is allocated for exporting countries, such allocation may be agreed with these countries. If not agreed upon, the quota shall be allocated for the exporting countries pro rata their respective share in imports in Ukraine, currently subject to special investigation, over the 3-5 years preceding such investigation, allowing for any such factors as may influence their sales.

8. Administration of supervisory measures shall be halted as of the date of the Commission's decision imposing such special measures.

9. Special measures may be applied to imported goods subject to special investigation throughout the territory of Ukraine or in one or several regions. If the goods at issue are being imported to Ukraine, they shall be cleared through customs subject to the following conditions:

- the said goods shall not be redirected by the importer;
- the said goods shall be imported to Ukraine and cleared through customs in the presence of an import permit issued as per Article 15 hereinbefore.

10. The Commission shall instruct the Ministry to notify the Cabinet of Ministers, Service or a relevant executive authority of its decision, made in keeping with this Article 16.

11. The Service, national producer or relevant executive authority shall may submit for a revision of this decision within 30 days from the date of publication of the Commission" decision imposing special measures.

Pursuant to this referral, the Commission shall revise the said decision and pass a resolution sustaining, amending or cancelling this decision by a qualified majority of votes.

#### Article 17.

##### **Factors of National Interests**

1. Findings on whether the national interests require the application of special measures shall be based on the assessment of all interests, including those of the national producer and consumer, the impact of such imports being subjected to special investigation on employment, investment by the national producer and consumer, and on Ukraine's international economic interests. The said findings shall be made in keeping with this Article 17 subject to the condition that all the parties concerned are given an opportunity to express their opinion as per Section 2 of this Article 17, placing special emphasis on correcting trade disproportion and restoring competition.

Special measures may not be applied if the Commission, as submitted by the Ministry and with an eye to all information required, arrives at the motivated conclusion that imposing such measures will contradict the national interests.

2. Applicants, importers, their associations, consumers, and other organisations may, within the time-limits stated in the special investigation notice, advise on their respective opinion and submit information to the Ministry,

concerning the conformity of such special measures to the national interests, which opinion shall be taken into account by the Commission when deliberating and making its decision.

This information — or a resume — may be transferred by the Ministry to other parties indicated in this Article 17 and they may, in turn, submit their views.

3. The interested parties may request the Ministry to stage hearings. Such requests shall be granted if submitted to the Ministry in writing, within the time-limits stated in the special investigation notice, and if they cite special reasons for such hearings from the standpoint of national interests.

4. The Ministry shall analyse such information, submitted as per Section 2 of this Article 17, and determine to what extent this information is exponential [demonstrative]. The results of this deliberation and findings on its motivation shall be submitted to the Commission. The Ministry shall allow for a resume of the Commission's findings made at a sitting thereof, when filing its proposals with the Commission under this Law.

Information submitted in accordance with this Article 17 shall be taken into account provided it is supported by evidence attesting to its undeniableness.

#### Article 18.

##### **Term of Application of Special Measures**

1. Special measures shall be applied over a certain period making it possible to prevent extensive damage or reimburse such extensive damage to the national producer; also to enable the national producer to restore his/their status on a given market. This period shall not exceed four years, including the term of application of supervisory measures. The said period shall not exceed four years, including the term of application of supervisory measures.

2. The period over which such special measures are applied, determined as per Section 1 hereinabove, may be prolonged if so resolved by the Commission and if it has been established that:

- such prolongation of the term of application of special measures is required to prevent extensive damage or reimburse such extensive damage to the national producer;
- there is evidence that the status of the national producer remains inadequate.

With regard to WTO member countries the term of application of special measures shall be prolonged in the presence of two conditions indicated in Paragraphs 2 and 3 of this Section.

3. A decision on prolonging the term of special measures shall be passed by the Commission by a simple majority of votes. Special measures subject to such prolongation shall not be more restrictive than those stipulated by the Commission's previous decision.

4. If the term of application of special measures exceeds one year these measures shall be gradually liberalised in the next year, including the term for which this measures may be prolonged.

5. The overall term of special investigation and supervisory and regional supervisory or special measures, including such prolonged term as may be adopted, shall not exceed eight years.

#### Article 19.

##### **Revision of Special and Supervisory Measures re Imports in Ukraine**

1. The Commission shall hold sittings during the period of special measures if so requested by the Service or relevant executive body.

If it is determined to apply special measures for a term of four years, the Commission shall start holding such sittings in the first half of the final year.

These sittings shall deal with the consequences of such measures, determining the degree of liberalisation of imports subject to special measures and the need to prolong the application of these measures.

2. If after such sittings of the Commission as are indicated in Section 1 hereinabove the Commission determines that special measures indicated in Articles 14; 15, and 16 hereinbefore must be cancelled or revised, it shall pass a decision on their cancellation or revision.

The said decision shall be passed by a qualified majority of votes and the Ministry shall publish an appropriate ad in the newspaper.

3. A decision on such special measures may contested in court over a month from the date of enactment, in keeping with procedures established by the laws of Ukraine.

#### Article 20.

##### **Specifics of Application of Special Measures**

1. Special measures shall not be applied repeatedly with regard to imported goods to which these measures were applied, within a time-limit equal to that within which these measures were applied previously. The said time-limit shall not be less than two years.

Special measures may be applied repeatedly with regard to imported goods to which they were previously applied subject to the following conditions:

- (1) at least a year has elapsed since such special measures started being applied to such imports in Ukraine;
- (2) special measures were applied to such imports not more than twice over the five years preceding the date of their repeated enactment.

2. A decision on a repeated application of special measures shall be passed by the Commission by a qualified majority of votes. Such repeated special measures may be applied to goods imported to Ukraine for a term of up to 180 days. The Ministry shall publish an ad on this decision of the Commission in the newspaper.

Article 21.

**Application of Special Measures to Goods**

**Imported from Developing Countries Members of WTO**

Special measures shall not be applied to goods imported to Ukraine from developing countries that are members of the WTO provided the aggregate share of these goods in overall imports does not exceed 9%. ( *The Article changed and amended according to Law of Ukraine #663-IV (663-15) of April 03, 2003* )

**CHAPTER VI. CLOSING PROVISIONS**

Article 22.

**Acts of the Commission, Ministry, and Service**

The Commission, Ministry, and Service may adopt acts, acting in conformity with and pursuant to this Law. The said acts shall take effect within the time-limits stated therein, unless otherwise provided by this Law and not earlier than when carried by the newspaper or otherwise made known to the interested parties. The said acts shall have binding force.

The Commission shall be responsible for rendering explanations on the application of this Law.

Article 23.

**Notification of Competent Authorities**

**In the Interested Country**

The Ministry of Foreign Affairs of Ukraine shall notify the government of the exporting country on the commencement, holding or termination of a special investigation and/or application of special measures envisaged by this Law.

Article 24.

**Enactment Procedures**

1. This Law shall take effect 30 days from the date of its publication.
2. Paragraph 3, Section 2, Article 2; Paragraph 4, Section 2, Article 18, and Article 21 of this Law shall be applicable as of the date of Ukraine's accession to GATT and admission to WTO. ( *Section 2 changed and amended according to Law of Ukraine #663-IV (663-15) of April 03, 2003* )
3. Laws and other regulatory documents of Ukraine shall be effective inasmuch as they do not contradict this Law.

**Leonid Kuchma, President of Ukraine**

**City of Kyiv, December 22, 1998**

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