

Draft
submitted by People's Deputy of Ukraine
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to alter the already submitted draft
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LAW OF UKRAINE
On Amendment of the Law of Ukraine
„On Safeguards of the National Industry against Dumped Imports”
(regarding procedural issues of an anti-dumping investigation)

The Verkhovna Rada of Ukraine hereby resolves:

I. To introduce the following changes to the Law of Ukraine „**On Safeguards of the National Industry against Dumped Imports**”

” (Bulletin of the Verkhovna Rada of Ukraine, 1999, No. 9-10, Article 65; 2000, No. 24, Article 186; 2003, No. 37, Article 300):

1. In paragraphs 2, 5, 10, 13 of part I of Article 1, the words “Ukraine” and “into Ukraine” shall be replaced, respectively, with words “importing country” and “into importing country.”

2. A paragraph shall be added to Article 1 with the following content:

28) an anti-dumping process shall be the procedure for consideration and settlement of anti-dumping cases. An anti-dumping process shall be divided into two stages – an anti-dumping procedure and an anti-dumping investigation. An anti-dumping process shall start from the date of applicant's submitting a complaint in

accordance with parts 1-3 of Article 12 of this Law, and end on the day of publishing one of the following notifications of:

- refusing the applicant to launch an anti-dumping investigation and a discontinuance of the anti-dumping procedure;
- annulling the decision to launch an anti-dumping investigation;
- suspending the antidumping investigation;
- a negative opinion regarding the existence of dumping (harm) which results in a discontinuance of an anti-dumping procedure;
- annulling the decision of the Commission to levy the anti-dumping duty;

of

stopping the investigation suspended in accordance with Article 15 of this Law.

3. Part three of Article 7 shall be worded as follows:

„3. Pricing between associated entities (between controlling and controlled parties) or parties entering into a countervailing agreement may not be considered prices prevailing in ordinary trade transactions and may not be used in determining normal value, unless it is established that such prices have no impact on the relations between the parties.”

4. In paragraph 2 of part eight of Article 9 the word “real” shall be replaced with the word “actual”.

5. Part three of Article 10 shall be worded as follows:

„3. As regards the volume of dumping imports, it shall be investigated whether an absolute increase in dumping imports has occurred with regard to production or consumption of relevant goods in Ukraine.

As regards an impact of dumping imports on prices of similar goods, the following issues shall be investigated:

- 1) whether dumping imports have cut down prices of similar goods in Ukraine;
- 2) whether such imports would significantly reduce prices or hamper a possible increase in prices that would otherwise have occurred.

When the Ministry approves the decision on the issue specified in paragraph 1 of part two of the present Article, more than one factor specified in the Article shall be considered.”

6. Passage two of part five of Article 10 shall be worded as follows:

„When the Ministry approves the decision on the issue specified in paragraph 2 of part two of the present Article, more than one factor specified in this part shall be considered.”

7. In part ten of Article 10 the word “existence” shall be replaced with “availability.”

8. Part ten of Article 10 shall be worded as follows:

„When the Ministry approves the decision to the effect that further dumping exports to Ukraine from the exporting country (exporting countries) is unavoidable and would do material harm unless preventive measures are applied, all factors mentioned in part ten of this Article shall be considered in aggregate.”

9. Part nine of Article 12 shall be worded as follows:

„9. During the anti-dumping procedure the Ministry shall consider evidence of dumping contained in the complaint, evaluate its sufficiency and justification to decide on launching an anti-dumping investigation or refusing to launch it.

If during the anti-dumping procedure the Ministry should establish that the proof of dumping, harm or cause and effect relationship between those is not sufficient to justify the continuation of the anti-dumping procedure, in particular, that the actual or potential volume of dumping imports is insufficient or the dumping margin is minimum, the complaint lodged by the applicant in accordance with parts one-three of this Article shall be dismissed and the Ministry shall recommend it to the Commission that the latter approve a decision to dismiss the application to launch an anti-dumping investigation.

A dumping margin is considered minimal where it is less than two per cent of the export price.

Actual or potential volume of dumping imports would normally be considered insignificant if they constitute less than three per cent of similar imports into Ukraine, unless imports from export countries, each country providing less than three per cent of similar imports into Ukraine, taken together, exceed seven per cent.

As regards imports from a developing WTO Member, anti-dumping measures shall not be applied provided that actual or potential volume of imports from this country is less than four per cent of the overall imports of similar goods from exporting countries. However, this rule shall not apply if aggregate shares of exporting countries, whose individual shares are less than four per cent, exceed nine per cent of the overall imports to Ukraine.

Lists of developing WTO Members are provided as attachments 5 and 6 to the Law of Ukraine “On Protecting Domestic Producers Against Subsidized Imports.”

10. Passage one of part ten of Article 13 shall be worded as follows:

„10. The term of an anti-dumping investigation shall not exceed one year from the date the decision to launch it took effect.”

11. In passage two of part ten of Article 13 the figure “15” shall be replaced with the figure “18”.

12. Part four of Article 16 shall be worded as follows:

„4. If during the anti-dumping procedure the Ministry should establish that the proof of dumping, harm or cause and effect relationship between those is not sufficient to justify the continuation of the anti-dumping procedure, in particular, that the actual or potential volume of dumping imports is not significant or the dumping margin is considered minimal, the complaint lodged by the applicant in accordance with parts one-three of Article 12 of this Law, the Commission, pursuant to the proposal from the Ministry, shall normally resolve on dismissing the application to launch an anti-dumping investigation and discontinuing the anti-dumping procedure.

If during the anti-dumping procedure the Ministry should establish that the proof of dumping, harm or cause and effect relationship between those is not sufficient to justify the continuation of the anti-dumping procedure, in particular, that the actual or potential volume of dumping imports is not significant or the dumping margin is considered minimal, the Ministry shall recommend it to the Commission to promptly discontinuing an anti-dumping investigation without taking any anti-dumping measures. In this event, the Commission would normally resolve to discontinue the investigation without applying any anti-dumping measures.

If during the anti-dumping procedure the Ministry should establish that individual exporters have a dumping margin of less than two per cent of the export price, the Commission shall stop an anti-dumping investigation pursuant to the proposal from the Ministry without taking any anti-dumping measures against these exporters. These exporters shall remain subject to an anti-dumping procedure and may become subject to a new anti-dumping investigation in the course of the following anti-dumping review carried out in accordance with chapter V of this Law.”

13. Part one of Article 15 shall have the following wording:

„1. The Commission may approve the decision to the effect that an obligation shall be assumed to stop dumping imports provided that:

1) the Commission resolved to apply preliminary anti-dumping measures;

2) no later than 60 days after the date of this decision of the Commission, the Ministry received a satisfactory written commitment from the exporter to review its prices or stop the exports of goods at dumping prices to the region of Ukraine that is under review, so that the Ministry and the Commission be convinced that the impact of harmful dumping would be eliminated;

3) the Ministry shall submit to the Commission, the exporter's commitment together with relevant proposals;

4) no later than 90 days after approving the decision mentioned in paragraph 1 of the present part, the Commission approved the decision to the effect that an obligation shall be assumed to stop dumping imports. Price increases resulting from these commitments:

shall not be greater than necessary to eliminate the dumping margin;

however, may be less than the amount of the dumping margin, if the said increase was sufficient to eliminate the harm to the national producer caused by dumping imports.

If in accordance with parts one and two of Article 11 of this Law the national producer is recognized as being a group of producers from one region, the exporters would be offered an opportunity in accordance with this Article to offer their commitments regarding imports to the relevant markets. If the Commission should establish that the application of anti-dumping measures should be in line with the national interests, regional interests shall be taken into consideration as well.

If the Commission approved the decision to the effect that an obligation shall be assumed to stop dumping imports and the obligation remains valid, the previous anti-dumping duty imposed by the Commission in accordance with Article 14 of this Law and the final anti-dumping duty imposed by the Commission in accordance with Article 16 of this Law, depending on the circumstances, shall not be applied to imports manufactured by the interested party specified in the Commission decision regarding the obligation as well as in any following decision provided such obligation remains valid."

14. Parts nine and ten of Article 15 shall have the following wording:

„9. Any stakeholder, in particular, national producer may submit information to the Ministry with proof of not-observing the obligation to stop dumping imports. In this event, the Ministry shall monitor import shipments with regard to this obligation and investigate this and other information regarding the case. The term for carrying out such monitoring and study shall not exceed six months from the date the interested party's submission was registered.

In case the Ministry should identify cases of violating or withdrawing the obligation to stop dumping imports by any interested party, or if such obligation should be withdrawn, on the Ministry's motion, the Commission shall approve a

decision by a simple majority vote to apply anti-dumping measures. This decision of the Commission would charge the following entities with the following tasks:

1) The Ministry and the Service shall issue relevant executive orders to levy the preliminary anti-dumping duty established by the Commission in accordance with Article 14 of this Law and/ or the final anti-dumping duty established by the Commission in accordance with Article 16 of this Law in connection with a violation or withdrawal of the said obligation;

2) The Ministry shall publish a newspaper notification of applying anti-dumping measures due to a violation or withdrawal of the said obligation.

The interested exporter, except for the case of annulling one's obligations, shall have an opportunity to submit its comments to the Ministry that may be taken into consideration by the Commission meeting that is to consider the relevant issue.

10. The preliminary and/ or final anti-dumping duty shall be applied in accordance with Article 14 and/ or Article 16 of this Law, depending on circumstances, based on the available information supplied by an interested party, in particular, a national goods producer, if there are grounds to believe that obligations are being violated or in the case of violating or withdrawing the obligations, unless the investigation resulting in the assumption of such obligations has not yet been stopped."

15. The first passage of part two of Article 17 shall be worded as follows:

„In case a preliminary anti-dumping duty has already been imposed, and if the Ministry should finally resolve on the presence of dumping and harm, upon a Ministry's proposal the Commission may, irrespective of whether or not it is decided to establish the final anti-dumping duty, approve a decision to specify the rate of the preliminary anti-dumping duty."

16. Part three of Article 17 shall be worded as follows:

„5. Requirements of Articles 12 and 13 of this Law, except for the terms established by them, shall apply to the procedure for review of anti-dumping measures that is carried out in accordance with Articles 19-22 of this Law. Reviews carried out in accordance with Articles 19-22 of this Law shall be prompt and be completed, normally, within 12 months from the date of starting a review. In any case, reviews in accordance with Articles 19-20 of this Law shall, in all cases, be completed within 15 months from the date of their beginning. Reviews carried out in accordance with Article 20 of this Law shall, in all cases, be completed within nine months from the date of their beginning. If reviews in accordance with Article 19 of this Law are launched while a review in accordance with Article 20 of this Law is under way as part of the same anti-dumping procedure, the reviews

in accordance with Article 20 of this Law shall be completed within the same period established for reviews carried out in accordance with Article 19 of this Law.

The Ministry shall submit for Commission's consideration proposals regarding measures no later than one month in advance of the occurrence of the above mentioned deadline.

If an investigation should not be finished within the above mentioned deadline, the measures:

- shall be suspended due to the expiry of their validity period as part of the investigation conducted in accordance with Article 19 of this Law,
- shall be suspended due to the expiry of their validity period in the event of investigations that are conducted in parallel in accordance with Articles 19-20 of this Law, if the investigation in accordance with Article 19 of this Law was launched when a review in accordance with Article 20 was under way as part of the same anti-dumping procedure or if such reviews were launched simultaneously, or
- remain valid within the framework of investigations conducted in accordance with Articles 20-21 of this Law.

The Ministry shall publish a newspaper notification about the actual expiry of the period of anti-dumping measures application or their continuing validity in accordance with this Chapter.”

17. In part one of Article 22 the words “joint work” shall be replaced with “cooperation.”

18. Parts one-four of Article 23 shall be worded as follows:

„1. If a national goods producer or any other interested party, during two years after final anti-dumping measures take effect, should submit to the Ministry sufficient information that export prices have been reduced as compared to the export prices that prevailed during the original investigation period and before (or after) the application of final anti-dumping measures, or the final anti-dumping measures cause changes or have caused an insignificant change in resale prices or further sale prices of imports in Ukraine, pursuant to a Commission's decision approved by a simple majority vote, the Ministry may resume the anti-dumping investigation with the view to establishing the effect the anti-dumping measures had on the said prices.

2. After the resumption of the anti-dumping investigation in accordance with this Article, exporters, importers and Ukrainian producers will have an opportunity to submit comments regarding the dynamics of resale prices or next sale prices. If the Ministry should establish that anti-dumping measures cause a change in these prices to eliminate harm previously identified in the course of a preliminary inves-

tigation, export prices shall be calculated again in accordance with Article 8 of this Law as well as dumping margins to take into consideration the newly calculated export prices. If it is considered that the conditions of part one of this Article are met due to a downturn in export prices that occurred after the original investigation period and before (or after) the anti-dumping measures, the dumping margins may be calculated again to take into consideration such lower exponent prices.

3. If during the resumed investigation the Ministry should establish that the dumping margin has been increased, pursuant to the proposal from the Ministry, the Commission shall approve a decision by a simple majority vote to introduce amendments to the previous decision regarding the application of the new anti-dumping duty rate in connection with the establishment of new export prices. The proposal shall be approved by the Commission unless it decides by a simple majority vote to dismiss it during one month after its submission by the Ministry. The anti-dumping duty rate established in accordance with this Article shall not exceed twice the amount of the duty rate established by the Commission in its original decision.

4. Relevant provisions of Articles 12 and 13 of this Law shall apply to the new investigation launched in accordance with this Article. The resumed investigation shall end, normally, within six month after the date of its resumption. In any case such resumed investigations in all cases shall end within nine months after the date of their resumption.

One month prior to the conclusion of a resumed investigation, the Ministry shall submit for Commission's consideration the proposals regarding application of anti-dumping measures.

If the resumed investigation is not concluded within the specified above deadline, the anti-dumping measures shall remain unchanged.

The Ministry shall publish a newspaper notification about the resumption of an investigation and the application of anti-dumping measures or their continuing validity."

19. Part one of Article 27 shall have the following wording:

„1. If anti-dumping duty evasion is occurring, its payment stipulated by this Law may cover imports:

of similar goods with insignificant changes or without those from other exporting countries that were not covered by the original anti-dumping measures;

of similar goods with insignificant changes from an exporting country covered by anti-dumping measures;

of components from an exporting country covered by anti-dumping measures or other exporting countries that were not covered by the original anti-dumping measures.

In case of an anti-dumping duty evasion, payment of the anti-dumping duty not exceeding the residual anti-dumping duty introduced in accordance with part six of Article 16 of this Law, may cover imports by companies benefiting from the introduction of individual anti-dumping duty rates applicable to imports from the countries covered by anti-dumping measures.

Anti-dumping duty evasion shall mean changes in the structure of trade between third countries and Ukraine or between individual companies of the exporting country covered by anti-dumping measures, and Ukraine arising out of the practice, transactions, agreements, processing or works that are not sufficiently justified or lack an economic basis, except where an anti-dumping duty has been imposed based on evidence of a harmful impact of the anti-dumping measures on prices and/ or volume of similar goods and proof, if necessary, in accordance with provisions of Articles 7-9 of this Law, that dumping is present in connection with normal values that had been previously established for such goods.

The said practice, transactions, agreements, processing or works include, in particular:

- 1) insignificant changes made to the goods under review so that they become eligible for customs codes of other goods, normally, not covered by anti-dumping measures since these changes do not affect essential characteristics of the goods under review;
- 2) sending goods covered by anti-dumping measures to Ukraine via third countries;
- 3) a reorganization by exporters or foreign producers of their sales structures and channels in the exporting country covered by anti-dumping measures so that in the final count goods are exported in Ukraine using intermediary services of foreign producers benefiting from the introduction of individual anti-dumping duty rates that are lower than the anti-dumping duty rate applied to foreign producers' goods coming from the exporting country covered by anti-dumping measures; and
- 4) transactions of assembly of a certain good from components in Ukraine or other country."

20. Parts three and four of Article 27 shall be worded as follows:

„3. In case an interested person (an applicant in an anti-dumping investigation or an executive authority of Ukraine) believe that anti-dumping duty evasion is occurring, this person shall submit a complaint to the Ministry containing sufficient proof of the facts specified in part one and (or) two of this Article.

Based on the complaint lodged in accordance with passage one of this part and pursuant to the relevant decision of the Commission, the Ministry shall con-

duct an anti-dumping investigation of the anti-dumping duty evasion. In this case, the Commission shall instruct the Ministry as follows:

an obligatory registration in accordance with part four of Article 28 of this Law of contracts under which imports to Ukraine are carried out;

or

the supplier shall deposit a relevant amount. The deposit may be made at the location of the customs authorities that perform customs clearance of the goods that are subject to the said anti-dumping investigation. The procedure for depositing this amount shall be stipulated by the Service.

To investigate the facts of anti-dumping duty evasion the relevant provisions regarding violations and anti-dumping investigations shall apply, stipulated by this law, except for those concerning the terms. The said investigation shall be conducted by the Ministry with the participation of the Service during the period up to nine months.

The Ministry shall submit for consideration by the Commission, proposals regarding the measures no later than one month in advance of the above mentioned deadline.

If the Ministry should establish that anti-dumping duty evasion is occurring, based on the Ministry's proposal, the Commission shall approve a resolution by a simple majority vote to extend the anti-dumping measures to imports to Ukraine of similar goods or components.

The extension of anti-dumping measures shall take effect from the date the registration was implemented in accordance with part four of Article 28 of this Law or on which the supplier was required to deposit the relevant amount.

4. Imports shall not be subject to registration in accordance with part four of Article 28 of this Law or shall not be subject to anti-dumping measures, if they are sold by foreign producers enjoying tax exemptions. Duly substantiated requests for tax exemptions shall be submitted within the terms established by the Commission in its decision on launching the investigation.

If practices, transactions, agreements, processing or works that are anti-dumping duty evasion occur outside Ukraine, tax exemptions may be granted by the Ministry to foreign producers that are under review and can prove that they are not related to any foreign producer subject to anti-dumping measures. If practices, transactions, agreements, processing or works that are anti-dumping duty evasion occur in Ukraine, an exemption may be granted by the Ministry, after consulting the Service, to importers that may prove that they are not related to foreign producers subject to anti-dumping measures. In these cases the Ministry shall approve a preliminary opinion to the effect that these foreign producers or importers do not practice anti-dumping duty evasion in accordance with part one and/ or two of this Article.

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

If the number of parties that request or may request tax exemptions is significant, the Commission acting pursuant to the proposal from the Ministry may, if at least one year has passed since it approved the decision on the extension of anti-dumping measures, approve the decision to launch an interim review of this extension. Any such review shall be conducted in accordance with Chapter V of this Law.”

21. In part three of Article 28 after the words “may be” the following words shall be added: “pursuant to the proposal from the Ministry”; the words “temporarily changes as follows,” “goods producer, were considered,” “unjustified” shall be replaced with words “in the market of Ukraine got temporarily changed as follows,” “goods producer to the Ministry, were taken into consideration,” “unjustified.”

22. Article 28 shall be supplemented with part seven with the following content:

„7. Without harm to part six of this Article, the Commission may require executive authorities of Ukraine in each individual case to submit information necessary in accordance with this Article for effective control over anti-dumping measures and control over activities of importers, sellers and Ukrainian producers. In this event, provisions of parts four and five of Article 13. Any data supplied by member-states in accordance with this Article shall be subject to the provisions of part six of Article 32.”

23 In part three of Article 30 the words “decision regarding” shall be replaced with the words “decision about.”

24. Part six of Article 32 shall have the following wording:

„6. Information received in accordance with this Law shall be used only for the purposes for which it is being requested. This provision does not exclude the use of information received in the process of one anti-dumping investigation for the purposes of launching other anti-dumping investigations as part of one and the same anti-dumping procedure regarding goods under review.”

II. This Law shall take effect 30 days after its publication.

Passage five of part nine of this Law shall apply as of the date of Ukraine's WTO accession.

Chairman of the Verkhovna Rada of Ukraine

V. Lytvyn