

The Law of Ukraine

On Application of Safeguard Measures against Imports to Ukraine

As amended and added by the Laws of Ukraine
N 1595-III of March 23, 2000,
N 663-IV of April 3, 2003,
N 860-IV of May 22, 2003,
N 3028-IV of November 1, 2005

(In the text of the Law words “the Ministry of Economy of Ukraine in all cases are replaced with words “the central body of executive power in the field of economic policy” in respective case according to the Law of Ukraine N 860-IV of May 22, 2003)

For the purpose of establishing mechanisms for protection of the interests of national producer¹ this Law shall regulate the principles and procedure of initiation and execution of special investigations of the facts of increased imports to Ukraine irrespective of the commodity's country of origin and exporting country which cause serious injury or threaten to cause serious injury to national producer and may result in application of the safeguard measures.

(preamble of the Law as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

Chapter I GENERAL PROVISIONS

Article 1. Definitions of Terms

The terms used in this Law shall have the following meanings:

- 1) directly competitive product** shall mean a product which directly competes with a product under special investigation;
- 2) exporter** shall mean a subject of the legal and economic relations which exports the product (products) from the country;
- 3) threat to cause serious injury** shall mean the imminent threat to cause serious injury to national producer. A determination of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

(clause three of Article 1 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

- 4) interested party** shall be any person notifying the central body of executive power in the field of economic policy (hereinafter referred to as the Ministry) of his interest to be involved in a special anti-dumping investigation in accordance with part two of the Article 9 of this Law and who is taking an active part in special investigation by providing written evidences or other information sufficient to the purposes of this investigation. The interested parties could be:

¹ The term ‘national producer’ used in this Law is analogue to the term ‘domestic industry’ used in WTO Agreement on Safeguards

(paragraph one of clause 4 of article 1
as amended according to the Laws of Ukraine
N 1595-III of March 23, 2000,
N 663-IV of April 3, 2003)

foreign producer, exporter or importer of the product under investigation, or corporation (association), where the majority of its members are foreign producers, exporters or importers of the product under investigation;

the competent authorities of a country exporting products under investigation;

national producer, producer or wholesale seller of the like products in Ukraine;

the corporation (association) where the majority of its members produces or makes wholesale trade of the like products in Ukraine;

a trade union comprising employees of the enterprises producing or making wholesale trade of the like products in Ukraine;

consumers, associations of consumers;

(new paragraph seven was added to clause four of Article 1
according to the Law of Ukraine N 3028-IV of November 1, 2005,
therefore paragraph seven shall be considered paragraph eight)

bodies of the executive power in Ukraine within their competence;

5) serious injury shall mean impairment in production, trade or financial situation of national producer which entails sufficient overall decline in the national production of a definite product;

6) import shall mean importation of product (products) to the customs territory of an importing country for consumption in this country;

7) importer shall mean a subject of economic and legal relations declaring delivery of product (products) to the customs territory of Ukraine;

8) competent authorities shall mean a bodies of state power of a country of origin or exporting country (customs union or economic group) which ensure, within their competence, implementation of its foreign and/or foreign economic policies;

9) exporting country shall mean a country of origin of product imported to Ukraine. An exporting country could be considered the country acting as an agent (customs union or economic group) with exception of cases when such product is transported as transit through this country, but is not produced in this country or there is no comparable price for this product in this country;

10) country of origin shall mean a country (customs union or economic group) where products have been fully produced or undergone sufficient processing or reworking;

11) national producer shall mean an aggregate number of producers of like products or directly competitive products or those producers whose aggregate production of such product constitutes the major portion of the whole amount of these products being manufactured in Ukraine.

12) period of investigation shall mean a period during which the Ministry investigates growth dynamics of volumes of imports of commodity that is the object of investigation, and the production, commercial, and financial status of the national producer;

(clause 12 of Article 1 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

13) like product shall mean an identical product i.e. alike in all aspects to the product under investigation, or in the absence of such product, another product which although not alike in all aspects, has distinguishing characteristics closely resembling those of the product under investigation;

14) sales shall mean transfer of property by any person to ownership or use and/or possession or/and at disposal of another person, in particular under the terms of purchase and sale contracts, property lease, other civil agreements, or in the event of change of one taken obligations to another or change in the terms of obligations to be performed;

15) special investigation shall mean the investigation of the facts of increased imports to Ukraine which causes serious injury or threaten to cause serious injury to national producer of the like or directly competitive product;

16) product shall mean any product manufactured for trading.

Article 2. Scope of Application of the Law

1. This Law shall be applied to the transactions related to imports of any commodity irrespective of the commodity's country of origin and exporting country.

(part one of Article 2 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

2. This Law shall not exclude application of other measures along with the safeguard measures:

laid down in legislation acts, international agreements of Ukraine ratified by Verkhovna Rada of Ukraine;

in the framework of General Agreement on Tariffs and Trade (hereinafter referred to as GATT) and World Trade Organization (hereinafter referred as WTO).

Article 3. Language of Investigations

1. According to this Law the investigations shall be performed in the state language of Ukraine.

2. Evidences, written proofs and other information submitted to the Ministry, State Customs Service (hereinafter referred to as the Service) or Interdepartmental Commission for Foreign Trade (hereinafter referred as the Commission) in accordance with this Law shall be accepted if stated in the state language of Ukraine.

Article 4. Terms

1. The terms of all and any actions under this Law shall be specified by the provisions hereof or be established by the Commission or Ministry. Upon expiry of such terms the right to any action shall be deemed to be lost. Any documents submitted after expiration date shall remain without consideration. The Commission or Ministry has the right to extend or reinstate the terms in the event of providing sufficient justification thereof.

2. The terms specified by this Law, or by the Commission or Ministry shall be calculated in years, months and days.

The terms shall be also fixed in a form of an imminent event.

3. The term calculated in years shall terminate in the respective month and date of the last year of this period.

The terms calculated in months shall terminate at the respective date of the last month of the period in question. If expiration term falls on the month with no respective date such term shall terminate at the last day of the month in question.

The term calculated in days shall be counted from the day next to fixed date of commencement.

The term specified as a reference to any imminent event shall be calculated from the day next to occurrence of the event.

If expiration dates falls on the day-off the last day of said term shall be the first working day following the day-off.

The last day of the term shall terminate at the moment of closing the working day at the Ministry, Service or Commission.

The terms shall not be exceeded if due documents were submitted to the Ministry, Service or Commission and filed under established order prior to the expiration date.

Chapter II

APPLICATION, NOTIFICATION OF INCREASED IMPORTS TO UKRAINE WHICH CAUSE OR THREATEN TO CAUSE SERIOUS INJURY TO NATIONAL PRODUCER. HEARINGS OF THE COMMISSION

Article 5. Notification of the Facts of Increased Imports to Ukraine Which Cause or Threatens to Cause Serious Injury to the National Industry

1. If a tendency of increased imports to Ukraine may require application of safeguard measures pursuant to the provisions of this Law, the Service, an appropriate body of the executive power of Ukraine shall notify the Ministry thereof. The Ministry on its initiative may start to gather the information in question. The Ministry may start gathering such information on its own initiative.

2. The information directed to the Ministry in accordance with part one of this Article shall have substantiated evidences of the existence of the factors illustrated in clauses 1 and 2 of part two of the Article 13 of this Law.

3. The Ministry shall submit the information obtained pursuant to part one of this Article, and/or the copies of an application laid down in the Article 6 of this Law, to the Cabinet of Ministers of

Ukraine and to the members of the Commission within five days of the date of receipt of aforementioned information and/or application.

Article 6. Application

The national producer may direct to the Ministry an application with a claim to apply the measures stipulated by this Law against the imports to Ukraine. Such application shall have the substantiated evidences of the factors illustrated in clauses 1 and 2 of part two of the Article 13 of this Law.

Article 7. Authorities of the Commission with Regard to Protection of National Producer against Increased Imports

1. The procedure of establishment and work of the Commission is defined in the **Law of Ukraine “On Protection of the National Producer against Dumped Import”**.

The first hearing of the Commission shall be held not later than in a month’s time of the date of receipt by the Ministry of the information indicated in the Article 5 of this Law, and/or of a copy of an application indicated in the Article 6.

(paragraph two of part one of Article 7 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

Any subsequent hearings including those held in the course of a special investigation and application of safeguard measures shall be held when required and within the terms stipulated by this Law.

2. At the hearings of the Commission the following matters shall be considered:

the existence of a fact of imports to Ukraine, the increase in volume of such imports, methods providing for establishment of the fact in question, a product which is an object of consideration, methods providing for establishment of possibility to cause serious injury and the amount thereof, the existence of a threat to cause serious injury to national producer that outputs like or directly competitive product, the existence of casual link between the imports and caused serious injury or threat to cause serious injury to national producer that outputs like or directly competitive product;

the terms and conditions of imports to Ukraine, tendencies of increase in their volumes and various factors of economic and trade situation concerning such imports;

the application of the appropriate measures envisaged in this Law due to the new circumstances;

other matters pursuant to this Law.

At the hearings of the Commission the following decisions shall be adopted:

on initiation, or refusing to initiate special investigation of imports of the commodity;

on applying preliminary special measures in respect of the imports of the commodity that are the object of investigation;

on applying measures of monitoring the imports of the commodity that are the object of investigation;

on applying special measures in respect of the imports of the commodity that are the object of investigation;

on discontinuing special investigation without application of special measures;

on alleviating special measures in respect of the imports of the commodity;

on review of special measures in respect of the imports of the commodity;

on canceling special measures in respect of the imports of the commodity;

other decisions in execution of this Law.

(new paragraphs were added to part two of Article 7 according to the Law of Ukraine N 3028-IV of November 1, 2005, therefore paragraph six shall be considered paragraph sixteen)

A resolution in the matters set out in this paragraph shall, if required, be adopted under established working order by means of signing the draft resolution by the members of the Commission unless otherwise is specified by this Law. To this end the Chairman of the Commission or his deputy shall give a notice to the members of the Commission and offer them to express in writing their opinion within the terms determined by him for taking the said opinion into account. This term, as a rule, shall neither be less than five nor exceed 10 days.

Chapter III

INITIATING AND EXECUTION OF SPECIAL INVESTIGATION

Article 8. General Provisions for Execution of Special Investigation

1. A special investigation shall be carried out for the purpose of establishment on the basis of the factors described in the Article 13 of this Law whether the imports cause or threaten to cause serious injury to national producer of Ukraine.

2. Period of investigation shall be normally from one to three years. In some cases such period may exceed three years.

The Ministry shall determine the duration of a period of investigation.

(part two of Article 8 is in the wording of the Law of Ukraine N 3028-IV of November 1, 2005)

3. The term of duration of a special investigation shall not exceed 270 days of the date of initiation of such investigation. Under extraordinary circumstances this term may be extended by the Commission up to 330 days. To this end the Ministry shall give a public notice thereon in publication of the Cabinet of Ministers of Ukraine (hereinafter referred to as the newspaper).

Article 9. Special Investigation

1. The Commission shall examine:

an application and/or information submitted by the Ministry pursuant to part three of the Article 5 of this Law;

the evidences described in such application or objective information acceptable for consideration by the Commission relating to increased imports to Ukraine which has caused or threatened to cause serious injury to national producer by such imports;

If conclusions of such examination prove sufficiency of the evidences on increased imports to Ukraine, which may cause damage, or threaten to cause damage to national producer the Commission shall make decision on initiation of a special investigation and authorize the Ministry to carry out such investigation and give public notice in the newspaper on initiation of a special investigation. The Commission shall make such decision by a simple majority vote.

If the Commission has established that the provided evidences are insufficient to initiate a special investigation, the Commission shall make an appropriate decision on inexpediency of initiation of a special investigation and authorize the Ministry to notify the Service, an appropriate body of executive power of Ukraine or national producer of its conclusions. Such decision the Commission shall make by two-thirds (a qualified majority) vote.

A decision on initiation or on inexpediency of initiation of a special investigation shall be made by Commission within 30 days of the date the Ministry has received the information or application described in the Articles 5 and 6 of this Law.

2. The Ministry shall begin an investigation and within five days of the date of making an appropriate decision by the Commission described in part one of this Article, give public notice in the newspaper which shall contain the following:

- 1) the information on initiation of a special investigation;
- 2) the information on the product imported to Ukraine which is subject to a special investigation;
- 3) clause 3 of part 2 of Article 9 is deleted;

(according to the Law of Ukraine
N 3028-IV of November 1, 2005)

4) a brief report (hereinafter referred to as summary) of the evidences on the basis of which a special investigation has been initiated;

5) a notification that any relevant information pursuant to an investigation in question may be directed to the Ministry;

6) the time-limits within which the interested parties may:

submit their written comments and other relevant information including the evidences in favor of themselves;

require the hearings to be held at the Ministry pursuant to part four of this Article;

7) the address of the Ministry where all correspondence shall be directed;

3. The Ministry has the right to require the Service and other bodies of executive power of Ukraine, the interested parties to provide the information needed to perform a special investigation. Such request shall be binding to the bodies of executive power and interested parties, and be fulfilled within the time-limit fixed by the Ministry.

For the purpose of establishing whether the evidences stated in information provided to the Ministry by the Service or other bodies of executive power of Ukraine or interested parties are sufficient enough to carry out a special investigation, the Ministry shall verify such information.

4. The interested parties shall have the right to apply to the Ministry in writing, within the time-limits specified in the notification of initiation of a special investigation, with requirement for the hearing to be held at the Ministry in the matters of a special investigation with their participation therein:

1) if they have proved that such special investigation concerns their interests and the results thereof may affect their business;

2) provided that there are special reasons for such hearings to be held.

5. The interested parties participating in the hearings pursuant to the matters of a special investigation may supply additional information to the Ministry in the course of such hearings. Oral information supplied to the Ministry by the interested parties in the course of hearings shall be accounted by the Ministry when carrying out special investigation only if it is subsequently reproduced in writing not later than five days of the date of closing the hearings.

6. The interested parties may, on written request, see all information provided by another interested party with exception of the official documents of the Ministry, Service and Commission if such information:

1) relates to protection of their interests;

2) is not confidential pursuant to the Article 12 of this Law;

3) is used for the purposes of a special investigation.

The interested parties may supply their comments to such information, which shall be accounted by the Ministry, provided that such comments are well grounded and have been supplied to the Ministry within fixed time-limits.

The information and evidences supplied to the Ministry by one of the interested parties in the course of a special investigation shall be also supplied to all other interested parties involved. Where the information and evidences haven't been provided to the Ministry or to other interested parties, or provided information and evidences could not be verified, such information and evidences shall be disregarded by the Ministry in the course of a special investigation.

7. If the Ministry established that the interested party has provided inaccurate or erroneous information it shall disregard such information and make use of the actual data being at its disposal.

Where the information required by the Ministry has not been provided within the time-limits specified by this Law or established by the Ministry pursuant hereto, or there are considerable difficulties in carrying out special investigation, the Ministry shall make conclusions on the basis

of the actual data in its disposal. The Ministry shall direct such conclusions to the Commission's consideration.

8. The Commission, pursuant to the conclusions made by the Ministry, may adopt a resolution on termination of a special investigation. Such resolution shall be adopted by the Commission by a qualified majority vote not later than 30 days of the date of submission of the Ministry's conclusions described in part seven of this Article, and be based on insufficiency of the evidences to carry out an investigation in question. By such decision the Commission shall authorize the Ministry:

- 1) to draw up a report on the results of a special investigation;
- 2) to notify the Cabinet of Ministers of Ukraine, Service and interested parties of the termination of a special investigation;
- 3) to give an appropriate public notice in the newspaper pursuant to a decision made.

9. In the course of a special investigation the Commission may make a decision on application of the safeguard provisional measures and/or surveillance measures pursuant to the Article 11 and Chapter IV of this Law.

Article 10. Procedure of Making Decision on Application of Safeguard Measures

1. For the purpose of completion of a special investigation the Ministry shall submit a report to the Commission on the results thereof.
2. While reviewing the report on results of a special investigation the Commission at its hearing may decide to apply the safeguard measures pursuant to the Chapter V of this Law.
3. The Commission shall make a decision to apply safeguard measures after reviewing all evidences relating to the increased imports to Ukraine and establish:

a fact (facts) of serious injury or threat to cause serious injury;

the existence of casual link between the import of a product and serious injury caused or threaten to cause to national producer of the like or directly competitive product;

(paragraph three of part three of Article 10 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

whether the application of the safeguard measures meets the national interests.

Article 11. Application of Provisional Safeguard Measures

1. Not earlier than 45 days of the date of initiation of a safeguard investigation the Commission may make a decision by a simple majority vote on application of the provisional safeguard measures, provided that:

- 1) the Commission has made a decision on initiation of appropriate investigation pursuant to the Articles 8 and 9 of this Law;
- 2) a public notice has been published in the newspaper on initiation of a special investigation;

3) the interested parties have been given an opportunity to submit their comments and other relevant information to the Ministry;

4) the Ministry has preliminarily established the existence of such circumstances under which any delay in application of preliminary special measures may cause injury the consequences of which will be hard to remedy afterwards;

(clause 4 of part one of Article 11 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

5) the Ministry has preliminarily established that actual available data provided for substantiated evidence confirming that the increased imports to Ukraine caused or threaten to cause serious injury;

(clause 5 of part one of Article 11 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

6) the Ministry has made conclusion on the necessity to apply the provisional safeguard measures by the Commission.

The Ministry shall give an appropriate public notice in the newspaper on a decision made.

2. The time-limits for application of the provisional safeguard measures shall neither exceed 200 days and nor exceed the term of execution of a special investigation.

3. The provisional safeguard measures pursuant to the provisions of this Law shall be applied by means of imposition of a special duty.

A rate of a special duty payable by an importer of the products to Ukraine shall be established in an appropriate decision of the Commission on application of the provisional safeguard measures. Such duty shall be paid irrespective of payment of other taxes and charges (mandatory payments) including duties, customs fees which are normally payable in cases of importation to Ukraine.

A special duty shall be paid in a cash or non-cash form or by means of cash deposits or bonds equal to the duty amount if not otherwise is established by the legislation of Ukraine. The money may be deposited at the place of location of customs bodies carrying out customs clearance of a product under special investigation. The Service shall establish the procedure of making deposits.

By the end of the term of application of the provisional safeguard measures the Ministry shall submit to the Commission a report and conclusions on the results.

4. The provisional safeguard measures relating to the imports to Ukraine shall be nullified where:

1) a made decision, pursuant to part five of this Article, sets out that the imports to Ukraine of a product which is subject to a special investigation have not caused or threatened to cause serious injury to the national producer;

2) a decision made to apply safeguard measures pursuant to the Chapter V of this Law.

The application of the provisional safeguard measures shall terminate of the date of an appropriate decision of the Commission laid down in this part entering into force.

5. If the Commission reached a conclusion that no injury has been caused or threatened to cause to the national producer, the Commission shall make a decision at the hearing on:

1) nullification of application of the provisional safeguard measures;

Such decision shall also nullify imposition of a special duty.

2) continuation by the Ministry of a special investigation.

Such decisions shall be made at the hearings of the Commission by a qualified majority vote.

The Ministry shall give an appropriate public notice in the newspaper on the decisions in question.

6. The decisions of the Commission mentioned in part five of this Article may stipulate a refund to an importer of a paid special duty.

An importer shall submit to the Service an application on refund of the paid amounts of a special duty within 30 days of the date of making decision by the Commission pursuant to part five of this Article. This application shall identify the customs bodies that carried out customs clearance of a product on which a special duty has been imposed. To such application shall be attached the documents confirming the fact of importation to Ukraine and customs clearance of aforementioned product, within a period of the provisional safeguard measures being in force, from the date the amount of a special duty has been duly paid in accordance with the decision made by the Commission pursuant to paragraph three of this Article.

An application on the refund of the paid amounts of a special duty shall be duly justified if it sets out accurate information on the paid amounts of a special duty and supported by all customs documents relating to settlements and payments of the amounts in question. If such application does not provide for the described above information the Service having reviewed an application in question shall return it back to an applicant with the appropriate explanations and comments.

The Service shall immediately have the original of such application directed to the Ministry of Finance of Ukraine with attached documents and their copies directed to the Commission and Ministry.

A refund of aforementioned amounts of a special duty shall be carried out by the Ministry of Finance of Ukraine within 90 days of the date of making an appropriate decision by the Commission. If an importer fails to provide all relevant documents relating to refund of the paid amounts of a special duty within the time-limits specified in this part such amounts shall be not refunded.

Article 12. Confidential Regime

1. Any information which is by nature confidential (because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a party supplying the information or upon a party who received the information, etc.,) or which is provided on a confidential basis by interested parties in the

process of special investigation shall, upon good cause shown, be treated as such by the Ministry.

2. The interested parties providing the Ministry or Commission with confidential information shall furnish it with non-confidential summary thereof. The summary shall be detailed to the extent which allows understanding essence of the information provided on a confidential basis. If interested parties indicate that such information cannot be summarized, they shall specify the reasons why a summary cannot be provided.

If the Ministry finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

(part two of Article 12 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

3. The Ministry or Commission must not disclose the confidential information without a permission of the party that provided it. The information exchanged between the Ministry and Commission, as well as information on the hearings of the Commission or official documents of the Ministry or Commission relating to a special investigation must not be disclosed.

(part three of Article 12 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

4. The information obtained pursuant to the provisions of this Law shall be used only for the purposes thereof.

5. This Article does not hinder a disclosure by the Ministry or Commission of general information or evidences on the basis of which the Commission makes a decision.

6. The persons who are guilty of disclosure of the confidential information obtained pursuant to the provisions of this Law shall bear responsibility in accordance with legislation.

7. Part seven of Article 12 is deleted.

(according to the Law of Ukraine
N 3028-IV of November 1, 2005)

Article 13. Establishment of Existence of Serious Injury or Threat Thereof

1. In the course of a special investigation the Ministry shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the national producer, in particular:

(paragraph one of part one of Article 13 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

1) tendencies in Ukraine's imports under investigation, particularly growing imports and (or) conditions thereof;

(clause 1 of part one of Article 13 in wording of
the Law of Ukraine N 663-IV of April 3, 2003)

2) a fact (facts) of serious injury and/or threat thereof to national producer being a subsequent impact of such imports;

3) the existence of a casual link between the increased imports and/or the conditions thereof and caused serious injury or threat thereof.

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

1) import turnover of product (products) if such turnover increased to a larger extent in the course of investigation in absolute and relative terms of the amount of production or consumption in Ukraine of the like or directly competitive products;

2) prices of the imports to Ukraine of the product (products) concerned if in the course of investigation the sufficient decrease in price of such product has taken place with regard to the price of the like product in Ukraine;

3) a consequent impact on the national industry being the result of the effect of aforementioned factors laid down in clauses 1 and/or 2 of this part. Such impact shall be determined by a tendency in changes of some economic factors, in particular: the production by a national producer of products under investigation; utilization by a national producer of the production capacity; the stock of products; sales of products; certain segment of the Ukrainian market occupied by national producer; prices of products (i.e. decrease in prices or impediment to increase in prices which normally have been practiced); productivity; capacity utilization volumes of profits or losses of a national producer; profit of a national producer from invested capital; liquidity and employment situation at the enterprises of a national producer, etc.

(clause 3 of part two of Article 13 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

4) other factors relating to investigation in question.

When factors other than increased imports are causing injury to the national producer at the same time, such injury shall not be attributed to increased imports.

(paragraph six was added to part two of Article 13
according to the Law of Ukraine N 3028-IV of November 1, 2005)

3. Where there is claim on a threat of a serious injury the Ministry normally shall evaluate a possibility of causing injury as an outcome of existing situation. To this end the following factors shall be taken into account:

1) level of increase in the volume of export products to Ukraine being under special investigation;

2) future or already existing export potential of a country of origin or exporting country, as well as probability of utilization of such potential for the export of such product to Ukraine;

(clause 2 of part three of Article 13 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

3) tendencies in affecting the national producer by the imports.

Chapter IV
SURVEILLANCE MEASURES AGAINST IMPORTS TO UKRAINE

Article 14. Procedure of Application of Surveillance Measures against Imports to Ukraine

1. If in the course of a special investigation the Ministry establishes a threat to cause serious injury, the Commission on recommendation of the Ministry shall make a decision to apply in the course of such investigation the surveillance measures pursuant to the provisions of the Article 15 of this Law. Such decision shall be made by the Commission by a simple majority vote.

2. The Service, an appropriate body of executive power or national producer shall provide the Ministry with information on increase in the volume of imported product (products) to Ukraine irrespective of country of origin and exporting country, which threaten to cause serious injury to national producer. On the basis of such data the Ministry shall prepare relevant information on the existence of a threat of serious injury and submit it to the Commission.

(part two of Article 14 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

3. On request of any member of the Commission or on initiative of the Ministry, the Commission shall have the hearing to be held within a period of time that enables to comply with the time-limits stipulated by this Law, but not later than on tenth working day of the date of receipt by the Ministry of information mentioned in part two of this Article and prior to the date of application of the surveillance measures, to review such information and make an appropriate decision.

4. Pursuant to the results of the review performed in accordance with part three of this Article, the Commission, by a simple majority vote, shall make decision on application of the surveillance regime or regional surveillance regime taking into account the national interests.

5. Where the Commission thinks it unreasonable to apply the surveillance regime against imports in the whole territory of Ukraine it may decide to initiate the regional surveillance regime in one or several regions of Ukraine.

6. By order of the Commission, the Ministry shall inform the Cabinet of the Ministers of Ukraine, the Service and an appropriate body of executive power on the decision made by the Commission and give an appropriate public notice in the newspaper.

7. The terms of surveillance shall be limited and may not exceed the period set for the conduct of the special investigation.

(part seven of Article 14 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

8. Where the surveillance or regional surveillance regime has been applied the Service shall, prior to tenth day of each month, submit to the Commission and Ministry the appropriate information on total value of the product, which are calculated pursuant to the basic conditions of delivery CIF- the boarder of Ukraine, and the volume of the product in accordance with the appropriate permission to import issued by the Ministry and acknowledged by the Service within a preliminary period.

Basic conditions of the delivery shall be established pursuant to the International interpretation of the commercial terms – “INCOTERMS” in the wording, which is valid at the date of product importation to Ukraine.

Where the product has specific consumer characteristics or there is specific situation in the market of Ukraine the periodicity of submission of such information specified in the first paragraph of this part may be changed by the Commission on proposal of the Ministry.

Such information shall contain the description of the product and the country of origin. Any other information may be provided if determined in the appropriate decision of the Commission.

Article 15. Surveillance and Regional Surveillance Regimes of the Imports to Ukraine

1. The importation of a product to the customs territory of Ukraine, to which has been applied the surveillance or regional surveillance measures against imports to Ukraine, pursuant to the appropriate decision of the Commission, shall be carried out if an appropriate permission to imports issued by the Ministry under established order and form, within seven working days of the date of submission by an interested importer of an appropriate application, has been supplied to the appropriate customs authority of Ukraine.

2. In such application pursuant to part one of this Article an interested importer shall provide, in particular, the information on:

the full name of the applicant and his registered address (first name, second name and patronymic name for a natural person);

identification code (number);

a shipping agent/freight carrier (full name, registered address);

declarant (full name, place of location)

validity of the permission for import;

the country of origin of a product;

the country of export;

customs point and date of importation to Ukraine and a list of transportation means;

reference to the decision of the Commission on application of the surveillance or safeguard measures;

an accurate description of imported products;

marking and numbers of products, packages, quantity of such packages, numbers and quantity of packages;

description of products in accordance with Harmonized Commodity Description and Coding System;

gross weight (Kg);

net weight (Kg);

additional units of measurement;

price in accordance with basic conditions of delivery CIF-the boarder of Ukraine in USD or Ecu (Euro);

additional details of product documents;

basic conditions of delivery pursuant to INCOTERMS.

3. A permission to import shall contain the information on the price and volume of products to be imported, reference that such product is subject to application of the surveillance or regional surveillance measures, other conditions and information on imports pursuant to the content of the application of an interested importer.

A permission to import shall be valid in the whole territory of Ukraine within 90 days of the date of issue.

4. Importation of products to the customs territory of Ukraine, which are subject to application of the surveillance or regional surveillance measures, shall be carried out provided that the customs authority of Ukraine has established that:

1) the total cost or volume of products do not exceed the cost or volume of products specified in a permission to imports for more than 5%;

(clause 1 of part four of Article 15 as amended
according to the Law of Ukraine N 3028-IV of November 1, 2005)

2) an imported product, the terms and conditions of such importation are in full accord with those specified in permission to imports.

5. A decision of the Commission on application of the surveillance of imports to Ukraine may provide for a submission to the customs authority of Ukraine by an interested importer of the certificate of origin of a product, which is subject to application of the surveillance or regional surveillance measures. However, this shall not exclude the application of other provisions of the Law with regard to a submission such certificate to the customs authority of Ukraine.

Chapter V

SAFEGUARD MEASURES

Article 16. Application of Safeguard Measures

1. Where an increase in imports to Ukraine is taken place in the amounts and/or within terms or under conditions, which cause or threaten to cause serious injury, the Commission, for the purpose of protection of the national interests, may decide to apply the following safeguard measures:

1) clause 1 of part one of Article 16 is deleted;

(according to the Law of Ukraine

2) assignment of a quota on imports under special investigation with establishment of the amount of quotas and procedure of their allocation.

3) establishment of a special duty for Ukraine's imports under special investigation.

(part one of Article 16 is added with clause 3
according to the Law of Ukraine N 663-IV of April 3, 2003)

2. The special duty determined by the Commission shall be paid by importer of the goods to Ukraine regardless of other taxes and fees (obligatory payments) paid on Ukraine's imports.

The rate of the special duty shall be determined in percentage points to the customs value of the goods under special investigation. Customs value of these goods is calculated according to the basic terms of delivery CIF – Ukraine's border. The special duty is to be paid in a corresponding amount and separately in every case with no discrimination and regardless of the exporting country.

The special duty shall be paid in cash or through bank transfer or through depositing the amount of duty on a deposit account or registering a respective debt liability, if Ukraine's legislation does not determine otherwise. Money shall be deposited at the location of the customs bodies, engaged in registering the goods under special investigation. The Service is to establish the procedure for clearing such payments.

By the end of the period for applying safeguard measures the Ministry is to submit a report and conclusions on the results thereof to the Commission.

(part two of Article 16 in wording of
the Law of Ukraine N 663-IV of April 3, 2003)

3. The decision of the Commission on application of the safeguard measures shall contain the information on:

completion and the results of a special investigation;

safeguard measures to be applied, name and code of the product pursuant to the Harmonized Commodity Description and Coding System, and description of the products under special investigation, periods of validity of the permission to imports, volumes of quotas and (or) rate of special duty, time-limits for safeguard measures to be applied, the date of commencement of application of the safeguard measures, the date of the Commission's decision entering into force, other information and regulations of application of the safeguard measures.

(paragraph three of part three of Article 16 as amended
by the Laws of Ukraine N 663-IV of April 3, 2003,
N 3028-IV of November 1, 2005)

4. The assignment of quotas to importation of products to Ukraine, which are subject to application of the safeguard measures, shall be made by means of issuance of special licenses by the Ministry.

5. In case of the assignment of quotas the Commission shall take into account the support of traditional flow of goods and/or the volumes of sales under contracts signed for the imports to Ukraine on which the Ministry and Service have informed the Commission.

6. Unless clear justification is given that a different level is necessary to prevent or remedy serious injury, the quantitative restriction shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available.

(part six of Article 16 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

7. In cases when a quota is allocated among exporting countries such allocation may be agreed with them. If no agreement has been reached, a quota shall be allocated among the exporting countries pursuant to their respective shares in imports to Ukraine, being an object of special investigation, during preceding period.

(part seven of Article 16 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

8. The application of the surveillance measures shall be terminated of the date of making decision by the Commission on application of the safeguard measures.

9. The safeguard measures may be applied to the imports under special investigation throughout the whole territory of Ukraine or in one or several regions of Ukraine. Where the product is about to be delivered to Ukraine its importation to the customs territory of Ukraine shall be permitted provided that:

1) such product shall not be re-addressed by an importer;

2) such product shall be imported to Ukraine on submission by an importer to the customs authority of Ukraine of an appropriate permission to importation of such product, issued pursuant to the Article 15 of this Law.

10. In the process of investigation, the Commission may adopt a decision to discontinue the special investigation without applying special measures. Such decision shall be adopted by majority of votes in the Commission upon submission by the Ministry of conclusions and report on results of the special investigation

(a new part was added to Article 16
according to the Law of Ukraine N 3028-IV of November 1, 2005,
therefore parts ten and eleven shall be considered
parts eleven and twelve)

11. On the Commission's assignment the Ministry shall publish in a newspaper the appropriate announcement and inform the Cabinet of Ministers of Ukraine, Service or an appropriate body of executive power about the decision of the Commission made pursuant to the provisions of this Article.

(part eleven of Article 16 as amended
by the Law of Ukraine N 3028-IV of November 1, 2005)

12. The Service, national producer or an appropriate body of executive power may require reviewing the aforementioned decision within 30 days of the date of publishing the decision of the Commission.

Pursuant to such request the Commission shall initiate the revision of the aforementioned decision and make decision by a qualified majority vote whether to leave the decision on application of the safeguard measures unchanged, or to amend or nullify such decision.

Article 17. Factors of National Interest

1. A conclusion in the matter of whether national interests require an application of the safeguard measures shall be based on evaluation of all interests, including those of the national producer and consumers, an influence of the imports under special investigation on employment of population, on investments of the national producer and consumers, on international economic interests of Ukraine. Such conclusion pursuant to this Article shall be made, provided that all interested parties have been given an opportunity to express their point of view pursuant to part two of this Article. In this connection special attention shall be paid to the necessity of elimination of the affecting disproportion in trade and restoration of a competition.

The safeguard measures may not be applied if the Commission, on proposal of the Ministry, definitely determines, taking into account all available information that application of such measures contradicts to the national interests.

2. The applicants, importers, their incorporations (associations), consumers and their organizations may, within the terms specified in a notice on initiation of the special investigation, inform on their point of view and submit to the Ministry their comments as to whether the application of the safeguard measures meets the national interests to be accounted in an appropriate decision of the Commission.

Such information or the respective summary thereof may be directed by the Ministry to other parties described in this Article, which may submit their comments thereto.

3. The interested parties may require the hearings to be held by the Ministry. Such requests shall be satisfied if submitted to the Ministry in writing and in the terms fixed in the notice on initiation of a special investigation setting out special, from the point of view national interest, reasons to hold such hearings in the Ministry.

4. The Ministry shall consider the information provided by a party pursuant to part two of this Article and determine to what extent such information is representative. The results of such consideration and determination as to whether the information in question is well substantiated shall be directed to the Commission. The summary of conclusions made by the members of the Commission, which have been reviewed at the hearings of the Commission, shall be taken into account in the Ministry's proposals given to the Commission pursuant to the provisions of this Law.

The information provided pursuant to this Article shall be taken into account if supported by sufficient evidences, which substantiate its impeccability pursuant to the requirements of this Law.

Article 18. Period of Application of the Safeguard Measures

1. Safeguard measures shall be applied only for such period of time as may be necessary to prevent or remedy the consequences of serious injury and to facilitate the process of the national producer's economic adjustment to the conditions of competition. The period may not exceed four years unless it is extended in case where the Commission discovered the existence of circumstances listed in part two of this Article

(part one of Article 18 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

2. The period of application of the safeguard measures necessary to prevent serious injury or remedy serious injury caused to the national producer may be extended by a decision of the Commission if it has been established that:

such extension of the period of application of the safeguard measures is necessary to prevent or remedy serious injury;

(paragraph two of part two of Article 18 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

or there is evidence that the interested national producer is adjusting.

(paragraph three of part two of Article 18 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

The period of application of the special the safeguard measures to the countries – members WTO shall be extended if two conditions illustrated in paragraphs two and three of this part exist.

3. Commission shall make decision on extension of the term for application of safeguard measures by simple majority vote. If the application term of safeguard measures is extended they shall not be of more restrictive character than it was envisaged by previous decision of the Commission.

4. If the period of application of the safeguard measures is over one such measures shall be progressively liberalized at regular intervals during the next periods of application thereof.

(part four of Article 18 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

5. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

(part five of Article 18 is in the wording
of the Law of Ukraine N 3028-IV of November 1, 2005)

Article 19. Revision of Safeguard and Surveillance Measures against Imports to Ukraine

1. During the period of application of the safeguard measures, on request of the Service or appropriate body of executive power, the Commission shall hold the hearings.

Paragraph two of part one of Article 19 is deleted.

(according to the Law of Ukraine
N 3028-IV of November 1, 2005)

At such hearings the Commission shall review the consequent impacts of application of the appropriate measures, establish the necessity of increase in pace of liberalization of the imports to Ukraine which is subject to application of the safeguard measures, and necessity of extension of the period thereof.

If the duration of the safeguard measures exceeds three years, such measures shall be subject to liberalization not later than the mid-term of the measures. If appropriate, such measures shall be withdrawn or the pace of liberalization shall be increased.

(a paragraph was added to part one of Article 19
by the Law of Ukraine N 3028-IV of November 1, 2005)

Measures extended according to part two of Article 18 of the present Law shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

(a paragraph was added to part one of Article 19
by the Law of Ukraine N 3028-IV of November 1, 2005)

2. If upon termination of the hearings described in part one of this Article the Commission makes conclusion on the necessity of nullification or revision of the surveillance or safeguard measures illustrated in the Articles 14, 15 and 16 of this Law, it shall make an appropriate decision on nullification or revision thereof.

The Commission shall make such decision by a qualified majority vote. A notice on such decision shall be published by the Ministry in the newspaper.

3. A decision on application of the safeguard measures may be appealed in the court pursuant to the Law of Ukraine within one month of the date of application of such measures.

Article 20. Peculiarities in Application of Safeguard Measures

1. No safeguard measures shall be applied again to the import of a product, which have been subject to such a measure, for a period of time equal to that during which such measure had been previously applied. The period of non-application shall be at least two years.

Safeguard measures may be applied again to the import of a product if:

1) at least one year has elapsed since the date of application of the safeguard measures to the import;

2) such safeguard measures have not been applied to the same import more than twice in the five-year period immediately preceding the date of introduction of such measures.

2. A decision to apply safeguard measures again shall be made by a qualified majority vote of the Commission. Safeguard measures may be applied again to the import of product (products) to Ukraine for the period of up to 180 days. A notice on making such decision by the Commission shall be published by the Ministry in the newspaper.

Article 21. Application of Safeguard Measures to the Import to Ukraine from the Developing Countries – Members of WTO

Safeguard measures shall not be applied against a product imported to Ukraine if it is originated in a developing country – member of WTO provided that the total share of imports thereof to Ukraine does not exceed 3 per cent, at the condition that, collective import share of developing countries – members of WTO is not more than 9 per cent of total imports to Ukraine.

(Article 21 as amended according to
the Law of Ukraine N 663-IV of April 3, 2003)

Chapter VI FINAL PROVISIONS

Article 22. Enactments of the Commission, Ministry and Service

The Commission, Ministry and Service may, pursuant to and for implementation of this Law, within their competence pass the appropriate enactments. Such enactments shall come in force within the time-limits specified therein if not otherwise provided by this Law, but not prior to the date of the their publishing in the newspaper or otherwise giving public notice to the interested parties and shall be binding for execution thereon.

The Commission shall provide explanation and interpretation for the provisions of this Law to apply.

Article 23. Notification of the Competent Authorities of the Interested Countries

The Ministry of Foreign Affairs of Ukraine shall notify the government of the exporting country of initiation, execution or completion of a special investigation and/or application of safeguard measures stipulated by this Law.

Article 24. Enactment Procedure

1. This Law shall be in effect as of 30 days from the date of publishing.
2. Paragraph three of part two of Article 2, paragraph four of part two of Article 18, Article 21 of the present Law shall be applied as of the date of Ukraine's joining the GATT and accession to the WTO.

(part two of Article 24 as amended according to
the Law of Ukraine N 663-IV of April 3, 2003)

3. The Laws and other normative and legal acts of Ukraine shall apply if not in conflict with the provisions of this Law.

President of Ukraine

L. KUCHMA

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