

D E C R E E  
of the President of Ukraine

**"On Procedures for the Application of Safeguard Measures Pursuant to  
the Principles and Disciplines of the General Agreement on Tariffs and Trade  
(GATT)/World Trade Organization (WTO)"**

With a view to reforming the foreign trade regime of Ukraine pursuant to the principles and disciplines of GATT/WTO;

officially recognizing and further establishing the principles and disciplines of GATT/WTO in the normative acts of Ukraine;

recognizing the status of Ukraine as a state acceding to GATT and joining the WTO;

in observance of Paragraph 4 of the Decree of the President of Ukraine "On Measures for the Implementation of a Unified State Policy on Import Regulation" with regard to the implementation mechanism of unilateral import restrictions pursuant to the principles and disciplines of GATT, I, as a President of Ukraine, D E C R E E:

1. To approve the Provisions on Procedures for the Application of Safeguard Measures pursuant to the principles and disciplines of GATT/WTO.

2. To note that this Provision shall not apply to measures established or applied pursuant to articles and agreements other than Article XIX of the 1994 GATT Agreements and other multilateral trade agreements in Annex 1A of the Uruguay Round of GATT, or to measures being implemented in accordance with protocols, agreements or arrangements concluded with in the framework of GATT 1994, which apply to:

- the balance of payments
- agriculture
- textiles

3. To determine that this Provision does not impede the approval or implementation of other provisions with regard to:

i) the prohibition, quantitative restrictions or inspection measures which can be justified through the reasons of ethics, public order, national security, the protection of human and animal life and health and the protection of plants, the security of national treasures of artistic, historical or archeological value, and the protection of commercial and industrial property;

ii) special formalities in the field of currency exchange.

4. This Decree enters into force as of the date of its publication in the newspaper "Uriadovy Courier".

President of Ukraine

L.Kuchma

## **PROVISION**

### **On Procedures for the Application of Safeguard Measures Pursuant to the Principles and Disciplines of GATT/WTO**

1. This Provision shall apply to products being imported into Ukraine from other countries, economic associations and customs unions, irrespective of their origin.
2. Unilateral safeguard measures in the form of tariff and non-tariff (quantitative) restrictions on imports, implemented through government domestic industry protection measures, may be applied only according to the procedures stipulated by this Provision.
3. For the purposes of this Provision:
  - a) "serious injury" shall be understood to mean a significant overall impairment in the position of domestic industry that produces like or directly competitive products on this territory;
  - b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of Paragraph (a) Item 3 of this Provision. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;
  - c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products, operating within the territory of Ukraine, or those whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products.
4. Unilateral safeguard measures in the form of tariff or non-tariff (quantitative) restrictions on imports shall be applied in cases when any product is being imported into the customs territory of Ukraine in such increased quantities, absolute or relative to domestic production, or when any product is being imported into the customs territory of Ukraine in such quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. Safeguard measures shall be applied for such a term and within such scope as is necessary to prevent or remedy serious injury.
5. If quantitative restrictions is used, the general quantities of imports shall not be less than the average level of imports for the last three years for which statistics are available, unless clear justification is given that lower level is necessary to prevent serious injury.
6. In cases in which a quota is allocated among supplying countries, an agreement must be reached with respect to the allocation of shares in this quota with all other parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, a quota should be allocated among the countries having a substantial interest in supplying the product concerned with respect to the proportions of the total quantity or value of the product being imported by those countries during a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.
7. In circumstances in which the dynamics of imports supply of any product, irrespective of its origin, will lead to increased quantities of the product being imported into the customs territory of Ukraine, absolute or relative to domestic production, or will lead or threaten to lead to serious injury to domestic industry, the

Ministry of Foreign Economic Relations (hereinafter referred as to MFER), interested ministry or department or interested associations of a branch of national industry, or Ukrainian economic agents shall notify in written form, the Interdepartmental Commission on Import Regulation (hereinafter referred to as the Commission) through its Secretariat. The information shall contain the necessary evidence determined on the basis of the criteria set out in items 32, 33 of this Provision.

8. When the Secretariat of the Commission obtains the information as set out in Item 7 of this Provision, the Commission is obliged to hold consultations thereof, as provided for in items 9 - 11. The consultations shall be held within 10 working days after the information, mentioned in Item 7, has been obtained by the Secretariat of the Commission. The Commission shall convene upon the request of the Head of the Commission or his Deputy. The Secretariat of the Commission shall provide the members of the Commission with information, as set out in Item 7 of this Provision.

9. The consultations shall be concerning:

- conditions and regulations for import, their dynamics, as well as various aspects of economic and trade aspects as far as a definite product in Ukraine's market is concerned.
- possible measures which may be taken.

10. In case of necessity, the consultations can be in written form. In such a case the Secretariat of the Commission shall inform the members of the Commission that written notice shall be submitted within 8 days.

11. When, upon the expiry of the consultation process, mentioned in Item 8, the Commission is certain that there is no reasonable evidence to justify the initiation of investigation, the Commission shall pass a decision that there is an absence of sufficient grounds for initiating an investigation thereof. The Commission shall publish the relevant notification in the newspaper "Uriadovy Courier" within one month after the information has been received.

12. When the consultations have closed, having shown there is sufficient evidence, the Commission shall initiate an investigation. The investigation shall be initiated within a one-month period after the Secretariat of the Commission has received the information. The Commission shall publish notification thereof in the newspaper "Uriadovy Courier". This notification shall be a summary of the data provided and shall specify that any relevant information should be provided to the Commission. The Commission shall determine a period within which importers, exporters and other parties concerned may present their views in written form and submit information, if it is to be taken into account during the investigation. The Commission shall determine a period within which the parties concerned may submit a request to present verbal evidence before the Commission.

13. During the course of the investigation to determine whether increased imports have caused serious injury or are threat to a domestic industry, the Commission shall evaluate all relevant factors of an objective nature having a bearing on the situation of that industry, in particular: the rate and amount of the increase in imports of the product concerned in absolute and relative terms; the share of the domestic market taken by increased imports; changes in the level of sales, production, productivity, utilization, profits and losses, and employment.

14. Such determination shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic

industry at the same time, such injury shall not be attributed to increased imports.

15. The Commission shall receive and make use of any information that it deems necessary after consultations in the Commission as well as ensuring the verification of this information through importers, businessmen, agents, producers, commercial associations, organizations and competent authorities of the exporting country.

16. The parties concerned as well as the representatives of the exporting country may receive any notification, submitted to the Commission in the investigation, extracted from domestic documents determined by competent authorities of Ukraine if these notifications necessary to secure their interests, shall not be confidential under item 29 of this Provision and will be used by the Commission in the investigation. Those parties shall send a written request thereof indicating the points of their concern.

17. The state authorities, upon the Commission's request and pursuant to the rules that it has determined, shall send the information which influences the progress of the product in the market that is an object of investigation.

18. The Commission may have hearing of the parties. The latter shall be heard, when they demand so in a written form within the period specified in the notification, which was published in "Uriadovy Courier", proving that they are actually sensitive as to the findings of investigation and they have grounds and special reasons for a hearing.

19. When the data requested by the Commission is not submitted in due time determined by this Provision, or when significant obstacles are being created in the investigation, the determination may be drawn on the basis of the data available.

20. When, within 9-months term from the date of initiation of the investigation, the Commission considers that public protection measures will be no longer practicable, the investigation shall be closed. The decision on the termination of investigation encompassing the basic conclusions of investigation and the summary of reasons of the latter, shall be published in the newspaper "Uriadovy Courier".

21. If the Commission deems public protection measures necessary, it shall make an appropriate decision within the period not exceeding 9 months from the date of initiation of the investigation. Under exceptional conditions this term may be extended for not more than two months: with this purpose the Commission shall publish a notification in the newspaper "Uriadovy Courier" that shall determine the duration and encompass the summary of reasons for the latter.

22. In critical circumstances where delay may cause serious damage which it would be difficult to repair, the Commission may take a provisional safeguard measure pursuant to the results of the consultations before the investigation is initiated.

23. The provisional safeguard measure shall be applied pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.

24. The duration of the provisional measure shall not exceed 200 days.

25. Provisional safeguard measures should take the form of tariff increases to be promptly refunded if the subsequent investigation does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry.

26. Along with the application of provisional safeguard measures the Commission shall immediately initiate the investigation. The results of investigation shall be used for reviewing of approved provisional safeguard measures.

27. The data obtained with regard to the implementation of this Provision may be used only for the purpose for which it was requested.

28. The Commission as well as its agents shall not disclose the information which is confidential by nature or which is provided on a confidential basis for the implementation of this Provision without a clearly set permission of the party submitting it. Each request for confidentiality shall indicate the reasons why this information is confidential. If the request for confidentiality has no grounds and the party concerned has submitted the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information under consideration may be disregarded during investigation.

29. In any case, the information shall be considered confidential, if its disclosure may have significant negative consequences for those who have disclosed the information or its source.

30. Items 27-29 of this Provision shall not prevent the competent authorities of Ukraine from taking account of the general information and, particularly, the reasons, on which decisions, adopted by virtue of this Provision are based. The competent authorities shall, inter alia, take into consideration the legislative interests of natural and legal persons who deem it necessary that their business secrets were not made public.

31. Analysis of imports dynamics and conditions under which they take place implemented as well as the analysis of serious injury or a threat of serious injury to a domestic industry which arise thereof, shall apply, in particular, to the following:

- a) the volume of imports, particularly, when the latter have considerably increased either in absolute terms or in relation to production or consumption in Ukraine;
- b) the price of imports, particularly, when a considerable reduction in price in relation to the price of the product concerned in Ukraine has taken place;
- c) the effect on domestic industry as well as the trends in certain economic factors, including:
  - production;
  - utilization of capacity;
  - reserves;
  - sales;
  - sectors of the market;
  - price (i.e. price reductions or price increases that would exist in the normal course of events);
  - income from investments;
  - liquidity flow;
  - employment.

32. Where a threat of serious injury is presented as an argument, the Commission also pursues an analysis if there is a clear evidence that a certain situation may cause real losses. In such a case it may also take into account elements such as:

- a) the degree of increase in exports into Ukraine;
- b) the exports potential of the country of origin or the exporting country that already exists or will exist in

the future, and the probability of exports resulting from this potential.

33. The decision of the Commission on the Application of Safeguard Measures shall be submitted for consideration to the Cabinet of Ministers of Ukraine and shall come into effect after its approval by the Cabinet of Ministers of Ukraine. The decision of the Cabinet of Ministers of Ukraine on the Application of Safeguard Measures shall apply on the 6th day from the date of its publication in the newspaper "Uriadovy Courier".

34. Safeguard measures shall be applied only for such period as may be necessary to prevent or remedy serious injury and to facilitate adjustment. This period shall not exceed four years unless it is extended under Item 35 of this Provision.

35. The period mentioned in item 34 may be extended provided that the Commission has determined, in conformity with the procedure set out in Items 7 - 32 of this Provision, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence of a deterioration in the economic situation and, finally, that the appropriate conditions set out in items 41 - 43 of this Provision, are adhered to.

36. 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.

37. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the Commission shall progressively liberalize it. If the duration of the measure exceeds three years, the Commission shall review the situation no later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure, the application of which was extended, shall not be more restrictive than it was during the initial period and should continue to be liberalized.

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

39. Notwithstanding Item 38 of this Provision, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

- a) at least one year has elapsed since the date of a safeguard measure on import of that product;
- b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

40. Safeguard measures shall not be applied against a product originating in a developing country, as long as the share of imports of the product concerned from those countries does not exceed three percent of total imports, provided that the total imports of developing countries and the share of import of which does not exceed three per cent shall collectively account for not more than nine per cent of total imports of the product concerned.

41. The Commission shall immediately notify the Committee on Safeguards of the World Trade Organization (WTO) upon:

- a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

- b) making a finding of serious injury or threat thereof by increased imports; and
- c) taking a decision to apply or extend a safeguard measure.

42. In making the notifications referred to in paragraphs b) and c) of item 41 of this Provision, the Commission shall provide the Committee of Safeguards of the WTO with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, duration and timetable for progressive liberalization.

43. Upon the invitation of Members of the WTO having a substantial interest as exporters of the product concerned, the Commission shall take part and defend the interests of Ukraine at the meetings of the Committee on Safeguards of the WTO. The purpose of those meetings shall be reviewing of the information provided pursuant to item 41 of this Provision, exchanging views on the application of the measure and negotiating with the countries that are WTO Members having a substantial interest as exporters of the product concerned with a view to reaching an understanding relating to the compensation for negative effects arising from the application of safeguard measures in trade.

44. The Commission shall make a notification to the Committee on Safeguards of the WTO prior to applying provisional safeguard measures referred to in Items 22 - 25 of this Provision.

45. The Commission shall notify promptly the Committee on Safeguards of the WTO of modifications to laws, regulations and administrative procedures relating to safeguard measures.

46. Any questions relating to the dispute settlement with the Governments of the Members of GATT/WTO arising from the application of safeguard measure pursuant to this Provision shall be settled on the basis of Provisions XXII and XXIII of the Agreement on the Settlement of Disputes, GATT 1994.