

**NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE
PROCEDURES RELATING TO SAFEGUARD MEASURES**

KYRGYZ REPUBLIC

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The present Law shall establish the main notions and principles of the legislation on safeguard measures, the order for investigation to ascertain the existence of serious injury as well as the order for application on safeguard measures

CHAPTER 1. GENERAL PROVISIONS

Article 1. The area of application of the present Law

The present Law shall regulate the relations occurred:

- due to the imports of some goods to the customs territory of the Kyrgyz Republic for free circulation in such quantities and under such conditions that can cause or threaten to cause serious injury to the domestic producers of like or directly competitive products as well as interests of the Kyrgyz Republic.
- between the foreign suppliers of products and domestic producers or directly competitive products as well as between Authorized Body and all interested parties.

Article 2. Purposes and principles of implementation of the present Law

1. Safeguarding of interests of domestic producers and elimination of a serious injury or threat of a serious injury in the relevant branch of the economy of the Kyrgyz Republic are regarded as the purposes of the present Law.
2. Safeguard measures are applied by the Authorized Body only under the condition of cause of a serious injury or its threat to domestic producers.
3. Safeguard measures may only be applied if the investigation procedure has been carried out exactly in line with the present Law.
4. Safeguard measures are applied to a supplied product independent of a source of import.
5. Only the measures mentioned in the present Law may be applied as safeguard measures. The following measures may not be applied as safeguard measures: actions on arbitrary restriction of supplies, agreement on market regulation or other actions, regulation of sales, introduction of price monitoring and other similar measures.

Article 3. Legislation of the Kyrgyz Republic on safeguard measures.

1. The legislation of the Kyrgyz Republic on safeguard measures refers to the current Law, other legislative acts and adopted relevant normative legal acts of the President and Government of the Kyrgyz Republic as well as normative legal acts of the Authorized Body.

International agreements and treaties ratified by the Kyrgyz Republic shall refer to the international legislation.

2. If an international treaty in which the Kyrgyz Republic is a party, establishes other rules different from the ones included into the present Law, the provisions of the international treaty supersede.

Article 4. Terms and definitions

The following terms are used in the present Law:

“WTO” - World Trade Organization;

“Injury” - significant deterioration of the economic situation of either an industrial branch or separate domestic producers;

“Temporary safeguard measures” - a complex of administrative and financial remedies applied by Customs bodies on the basis of the resolutions of the Government of the Kyrgyz Republic in the form of special customs duties for the goods imported to the customs territory of the Kyrgyz Republic for free circulation in such quantities and/or under such conditions that it can cause serious injury or threat of injury to domestic industrial branches or domestic producers of relative or directly competitive products;

“Interested parties” - an exporter, foreign producer, an importer of a product which is the subject of investigation or trade, industrial association where the majority of participants are producers, exporters or importers of such product, the government of an exporting country, the government of the Kyrgyz Republic, a producer of relative or directly competitive products in the

Kyrgyz Republic or a trade and industrial association, an association for protection of consumers' rights;

“Safeguard measures” - a complex of administrative and financial measures applied by Customs authorities on the basis of the resolution of the Government of the Kyrgyz Republic in the form of special customs duties and quotes to supplies of products imported to the customs territory of the Kyrgyz Republic for free circulation in such quantities and under such conditions that it can cause injury or threat of injury to domestic industrial branches or domestic producers of relative or directly competitive products;

“Quota” - quantitative restriction on supplies of a product defined by the Authorized Body being introduced by Customs bodies pursuant to the resolution of the Government of the Kyrgyz Republic;

“Committee” - Committee on WTO's safeguard measures;

“Domestic producers” – producers of the Kyrgyz Republic of relative or directly competitive products acting in the territory of the Kyrgyz Republic;

“Like products” - identical or homogeneous products:

- **“identical products”** - products identical in all respects;
- **“homogeneous products”** - products not identical in all respects but having similar characteristics and consisting of similar components;

“Supplier” - producer, exporter or importer of products;

“Investigation” - procedure of considering documents and other evidences in relation to import of any product to the customs territory of the Kyrgyz Republic for free circulation in such quantities and under such conditions that cause or threatening to cause serious injury to domestic producers of relative or directly competitive products;

“Special duties” - duties applied pursuant to the resolution of the Government of the Kyrgyz Republic by Customs bodies of the Kyrgyz Republic in case of supplies of any products to the customs territory of the Kyrgyz Republic for free circulation in such quantities and/or under such conditions that it can cause serious injury or its threat to domestic industries or domestic producers of relative or directly competitive products;

“Threat of injury” - unavoidable deterioration of economical situation or branch of industry or domestic producers in future;

“Authorized Body” - state body of the Government of the Kyrgyz Republic authorized to carry out investigation either upon the application of interested parties or at its own initiative.

CHAPTER 2. STATE CONTROL

Article 5. Bodies of state control

1. General management on the state control for trade activity of Suppliers is carried out by the Government of the Kyrgyz Republic pursuant to the Legislation on safeguard measures.
2. Direct activities on control and holding the investigation is carried out by the Authorized Body determined by the Government or established by the President of the Kyrgyz Republic.

Article 6. Authorized Body

1. The Authorized Body acts within the frameworks of authorities given to it by the present Law and on the basis of the Provision approved by the Government of the Kyrgyz Republic.
2. In cases stipulated by the present Law, and other legislative acts of the Kyrgyz Republic, acts of the President and Government of the Kyrgyz Republic, the Authorized Body publishes, within the limits of its competence, normative legal acts, including acts on investigation procedures.
3. If necessary to introduce special duties or quotas the Authorized Body introduces draft resolutions to the Government of the Kyrgyz Republic.
4. While carrying out its functions the Authorized Body cooperates with official bodies of other countries and international organizations.

CHAPTER 3. INVESTIGATION START-UP

Article 7. Submission of an application

1. An application for holding an investigation on facts which cause serious injury or threat of serious injury in the course of importing a product is applied to the Authorized Body by domestic producers of like or directly competitive products or on their behalf.
2. An application should contain the following data:
 - name of the Applicant and data on cost and production volume of relevant products;
 - complete description of products, name of a country or countries of its origin or export, list of known Suppliers of the given product;
 - evidences proving the existence, character or other terms of supplies of such product known to the Applicant;
 - data on rates and volumes of increasing supplies of the given product in absolute and relative values, share of the given product at the internal market, changes in volumes of sales, production, productivity, capacity utilization, amount of profits and losses, and employment;
 - influence of supplies of a given product on prices of relative or directly competitive product at the internal market of the Kyrgyz Republic and possible consequences for domestic producers confirmed by relevant evidences;
 - list of all known domestic producers of relative or directly competitive products and known data on cost and production volume of relative or directly competitive products which is the part of a share of the mentioned producers.
3. Any application can be called back before the start-up of the investigation procedure and in this case, it is considered as non-submitted.
4. In case if there are sufficient evidences on existence of injury or threat of injury caused by supplies of any products, the Authorized Body can make a decision to start the investigation without a written application at its own initiative.

Article 8. Consideration of an application

1. Within 30 days after the application has been submitted, the Authorized Body must consider authenticity and sufficiency of data mentioned in the application and make a decision to hold the investigation, or to refuse to hold the investigation.

2. If the Authorized Body considers the submitted information as incomplete and insufficient, it should notify an Applicant about it within 30 days from the day of receiving the application. In case an Applicant changes or introduces amendments to his application, the term of consideration of the application is counted from the day of receipt of the amendments and changes.
3. After the decision on holding the investigation has been made the Authorized Body publishes the notification in the official mass media edition and informs all the interested parties invited for holding hearings.
4. The Authorized Body takes the decision to refuse the holding of the investigation in case there are no sufficient evidences on supplies of products or there is no injury or its threat.
5. After the decision on refusal to hold the investigation is made the Authorized Body must notify an Applicant about it, mentioning the reasons for refusal.

Article 9. Notification on investigation

1. An Authorized Body notifies the Committee on the following issues:
 - (a) beginning of investigation;
 - (b) establishment of the fact of serious injury or its threat;
 - (c) introduction of temporary measures;
 - (d) making a decision on imposing and prolongation of the validity of safeguard measures.
2. Notification on investigation must contain all the information related to the case which must include evidences on serious injury or its threat in connection with the increased volumes of supplies, accurate description of a product, proposed safeguard measure, date of introduction and its duration and schedule of gradual decrease of its amount.

In case of notification on prolongation of the safeguard measure, the evidences on improvement of economic situation in the production industry of relevant goods must be submitted.

3. Besides the cases mentioned in the present article, the Authorized Body notifies the Committee on all laws, resolutions and administrative acts relevant to the safeguard measures as well as about all the changes and supplements made to these normative-legal acts.

Article 10. Review of an application.

After the beginning of the investigation the Authorized Body is obliged to submit the complete text of an application to all interested parties upon their request, however, the confidential information should not be disclosed.

CHAPTER 4. HOLDING OF INVESTIGATION

Article 11. Terms of investigation

Six months are considered as the term of investigation. In exceptional cases it can be prolonged for additional three months.

Article 12. Request for information.

1. After the beginning of an investigation the Authorized Body sends requests to interested parties.

Interested parties are provided with 20 days for the preparation of answers to the requests. This term can be prolonged but not more than for 10 days. The request is considered as received in 5 days after it has been sent by mail or transferred to a representative of an interested party.

2. In the course of an investigation the Authorized Body may require additional information from interested parties, having established the deadline by which it should be submitted.

3. Every interested party has the right to submit in written form any other evidences which it considers as necessary.

Article 13. Confidentiality

1. Information submitted as confidential to the Authorized Body in the course of an investigation should be treated as such if sufficient grounds are given and in no case should be published without the written permit from the party having presented it.

2. A party presenting confidential information should submit an explanatory note on this information of non-confidential nature.

An explanatory note should contain the sufficient detailed information for understanding of its sense, or it should explain the reasons why the submission of a detailed non-confidential information is not possible.

3. If the Authorized Body considers that the request for confidentiality does not have any grounds or if a person from whom this information comes, is unwilling to disclose it or he does not give permit to disclose this information in summary, the Authorized Body may not consider such information except in cases when it will be proven that the information is authentic.

4. A person responsible for disclosure of confidential information, bears the responsibility in accordance with the legislation of the Kyrgyz Republic.

Article 14. Procedure of holding the case

1. An Authorized Body holds the case in written form for every investigation within the stipulated procedure. All the documents concerning the investigation should be kept in the case file.

2. Materials on a case are submitted to interested parties to review in the course of investigation and revision of the case file, upon their request.

3. An Authorized Body publishes a report on each investigation. The report should include the detailed analysis of the case with the indication of reasons which are the grounds for making decisions. The report should be published after the investigation is completed.

Article 15. Hearings

1. Interested parties have the right to apply to the Authorized Body for holding hearings on the case with the purpose to review materials on the case and share views of an other party.

2. Hearings are held under the chairmanship of an official person of the Authorized Body who ensures confidentiality. Representatives of the Authorized Body, parties and other persons/entities, the presence of which is necessary, should be present on hearings.
3. Interested parties have the right to require additional hearings. In case if their request has grounds the Authorized Body can hold additional hearings.
4. In the course of hearings, a protocol should be recorded. Interested parties have the right to submit additional information orally. Oral information submitted in accordance with requirements of the present article is accepted for consideration after its written confirmation.

Article 16. Ascertainment of serious injury

In the course of an investigation the Authorized Body applies the norms of international agreements in order to ascertain and calculate the serious injury caused to domestic producers. Determination of a serious injury should be based on the received data confirmed by objective facts, besides this, the availability of causal relationship between the increased volumes of supplies and the cause of a serious injury or its threat must be proven.

In case when besides the increased volumes of supplies there exist factors causing serious injury to domestic producers, the serious injury caused by these factors must not be related to the increased volumes of supplies of mentioned product.

Article 17. Preliminary affirmative determination

In case if the fact of injury or its threat of the increased supplies of a product will be proved by evidences received in the course of investigation the Authorized Body makes a preliminary affirmative determination which is the ground for applying temporary safeguard measures.

Article 18. Applying of temporary safeguard measures

1. Temporary safeguard measures are applied in the form of establishment of a special customs duty for a product concerning which the investigation has been implemented.
2. Temporary safeguard measures are applied by Customs authorities pursuant to the resolution of the Government of the Kyrgyz Republic after the preliminary affirmative conclusion on existence of injury or threat of injury is made.
3. Notification on application of temporary safeguard measures must be sent 20 days before their application, to all interested parties and official representatives of their countries. During 10 days after the notification persons/entities involved into the investigation have the right to submit written comments relating to the grounds for application of temporary safeguard measures.
4. The amount of temporary safeguard measures should not exceed the preliminary established total sum of supposed or caused serious injury but it can be less than this amount if this smaller sum is sufficient for elimination of serious injury caused to domestic producers or economy of the Kyrgyz Republic.

Article 19. Publication of a decision on application of temporary safeguard measures

Temporary safeguard measures come into force from the moment of the publication of a decision of the government of the Kyrgyz Republic on application of temporary measures in the official mass media. The publication should contain the following data:

- names of Suppliers and countries where the product is delivered from;
- detailed description of the product (sufficient for customs purposes);
- criteria of serious injury estimation;
- main grounds for applying temporary safeguard measures;
- full description of the measure applied;
- other information necessary for understanding actual circumstances and legal aspects.

The publication should not contain confidential information.

Article 20. Terms of validity of temporary safeguard measures

1. The term of validity of temporary safeguard measures should not exceed 7 months.
2. The term of validity of temporary safeguard measures is included into the total term of validity of safeguard measures in accordance with the article 29 of the present Law.

CHAPTER 5. COMPLETION OF INVESTIGATION

Article 21. Completion of investigation

1. The Authorized Body should present main facts on the basis of which the decision will be made to all interested parties not later than a month before the final decision is taken.

Interested parties are provided with 15 days for submitting their remarks on the mentioned facts.

2. An Investigation held by the Authorized Body on determination a serious injury or its threat from supplies of products is completed with taking the following decisions:
 - termination of investigation without undertaking measures;
 - applying of safeguard measures.

Article 22. Grounds for termination of investigation without undertaking measures

An investigation will cease without undertaking measures in case it is revealed that there are no sufficient evidences of a serious injury or its threat from supplies of a product in relation to which the investigation has been implemented.

Article 23. Safeguard measures

1. Decision on applying safeguard measures is taken by the Government of the Kyrgyz Republic on the basis of the affirmative conclusion on the part of the Authorized Body after the completion of investigation.
2. Safeguard measures are applied in the form of restriction on the volume of supplies of a product - establishment of quota, or increase of Customs tariff by introduction of a special duty.
3. Information on the application of safeguard measures should be submitted by the Authorized Body to the Committee.

Article 24. Procedure of applying safeguard measures

1. Safeguard measures can not be repeatedly applied to products to which they were already applied during the same period of time as they were previously applied on the condition that the period after its termination lasts not less than for 2 years.
2. Safeguard measures can be applied again to a product if the initial term of validity is 6 months or less under the following conditions:
 - (a) less than a year has passed since the date of introduction of safeguard measures;
 - (b) similar safeguard measure was not applied to one and the same product more than 2 times during 5 years directly preceding the date of introduction of safeguard measures.
3. Safeguard measures can not be applied against products from developing countries-members of WTO if the share of their supplies in the total volume of supplies does not exceed 3 percent under the condition that as a whole not more than 9 percent of all supplies of a product covered by the investigation is accounted for by the developing countries-members of WTO whose individual share of supplies is less than 3 percent.
4. On determination of threat of serious injury by the Authorized Body the safeguard measures may be applied only from the date the affirmative determination on the presence of threat of injury is made and the effective temporary safeguard measures must be accounted in calculation the amount of safeguard measures

Article 25. Quotas

1. Quotas may be established by the Government of the Kyrgyz Republic on the basis of agreement with interested Suppliers (countries-suppliers) and further distribution of shares of supplies between them where:
 - (a) quotas established for separate Suppliers might not be less than average level of supplies of this product for the last three years except for the cases when more sufficient restriction is necessary to prevent or compensate consequences of serious injury;
 - (b) quotas can be established also proportionally to shares of previous supplies.
2. Without the agreement with interested Suppliers (countries-suppliers), quotas may be established by the Government of the Kyrgyz Republic if consultations were held under promotion of the Committee and in compliance with the following requirements:
 - a disproportional increase of volumes of supplies of one supplier in relation to the overall increase of supplies;
 - equally fair conditions for all Suppliers.
3. In case the Authorized Body determines a threat of injury to domestic producers, paragraph 2 of the present Article is not applicable.

Article 26. Special duties

1. On the basis of an affirmative determination of the Authorized Body and decision of the Government of the Kyrgyz Republic on imposition of special duties, Customs authorities levy them on the whole amount of supplied product in relation to which the investigation was held.

2. Special duties are levied independent of customs duties, taxes and other payments.

Article 27. Notification on completion of investigation and application of safeguard measures

A decision on applying safeguard measures comes into force from the date of publication the decision of the Government of the Kyrgyz Republic on introduction of safeguard measures in the official mass media edition. The publication should contain data in accordance with Article 19 of the present Law and also the reasons for accepting or rejecting the arguments or requirements of Suppliers.

Article 28. Determination of the amount of safeguard measures

1. Safeguard measures should be established in the amount sufficient for elimination of serious injury from the supplies of products in relation to which the investigation has been implemented.
2. The level of safeguard measures can be increased in no way during the period of its application.
3. The level of safeguard measures can be decreased pursuant to the plan approved by the Government of the Kyrgyz Republic upon the request of the Authorized Body in the following cases:
 - (a) if a safeguard measure operates for more than one year with equal intervals during the whole period of application;
 - (b) if a safeguard measure operates for more than 4 years after the termination of the half term of its validity. In this case the Authorized Body can consider the issue on abolishment of a safeguard measure or speed up the decrease of a safeguard measure.

Article 29. Term of validity of safeguard measures

1. The term of validity of safeguard measures should not exceed 4 years from the date of its introduction. Revision of the term of validity of safeguard measures is carried out by the Authorized Body at its own initiative or on the basis of the application submitted by domestic producers or on their behalf. The total term of validity of safeguard measures (including temporary safeguard measures) should not exceed 10 years.
2. In case the Authorized Body establishes that safeguard measures are necessary for to prevent or eliminate serious injury, the term of validity of a safeguard measure can be prolonged under observation of provisions of international agreements.

CHAPTER 6. FINAL PROVISIONS

Article 30. Compliance with obligations

In the event of application of safeguard measures or extension of the term of their validity, the Authorized Body has to take into consideration international obligations in the area of trade accepted by the Kyrgyz Republic and accept measures for keeping the level of tariff concessions between this and other countries in there are some.

Article 31. Elimination and change of measures.

1. An Authorized Body can, any time, at its own initiative or at the initiative of interested parties, consider the necessity of continuation of safeguard measures or the possibility of their change.

2. In case if it is established that the applied measures are not justified they should be eliminated, or their amount should be changed.

Article 32. The order of enforcement of the Law

The present Law shall come into force from the moment of its signing.

President of the Kyrgyz Republic

A. Akaev

Adopted by the Legislative Assembly
Of Jogorku Kenesh of the Kyrgyz Republic

7 October 1998
